LOUISIANA BAR JOURNAL

Volume III JANUARY, 1956 Number 3

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LOUISIANA BAR JOURNAL

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Entered as second class matter at the Post Office at New Orleans, La., under Act of March 31, 1879.

As of January 25, 1956, members of the Bar have received in benefits (through this office) $69,517.60, largest claim payment (on a $50.00 weekly policy) amounted to $6,450.00, number of claim drafts 339. Since October 9, 1954, 208 claim drafts were issued for a total of $44,105.38.

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BATON ROUGE, LA.

A Message From The President

W. W. Young of the New Orleans Bar

My first thought in beginning this message is the fine program and wonderful hospitality shown at the recent Fifth Louisiana Conference of Local Bar Associations held in Lafayette January 26-27-28, 1956.

As you know, this conference was sponsored by the Louisiana State Bar Association with the cooperation of the Lafayette Bar Association. A most interesting and enlightening program was arranged by the members of Public Relations Committee, Bascom D. Talley, Jr., Bogalusa, Chairman; the Section of Local Bar Organizations, Ashton L. Stewart, Baton Rouge, Chairman; the Section of Insurance, David R. Normann, New Orleans, Chairman; the Committee on Continuing Professional Education, James J. Davidson, Lafayette, Chairman; the Section of Taxation, Paul O. H. Pigman, New Orleans, Chairman; and the Junior Bar Section, George W. Pugh, New Orleans, Chairman.

In addition to the fine program, there was a delightful series of social events provided by the hospitality of the Lafayette Bar Association and arranged by Mr. William H. Mouston, President, and Mr. Lucien C. Bertrand. Mrs. Bennett J. Voorhies, Sr. and Mrs. Frank Smith, Jr., were Co-Chairmen of the ladies' entertainment features.

These mid-winter conferences, as we sometimes call them, have grown in popularity and attendance and we hope will accomplish their main purpose, that is, to increase interest in local bar organizations and the public relations aspect of the bar association.

The vote on the proposal made at the last annual meeting of the association to increase the dues was unfavorable.

The results of this balloting were as follows:

Ballots sent to membership	3576
Ballots returned	1738
Did not vote	1838

The results of the balloting were as follows:

For 795
Against 873

70 ballots were spoiled and were not counted by the tellers.

You will recall that the membership was also polled on October 31, 1955, as to whether or not the 1957 annual meeting should be held inside or outside of Louisiana.

The result of this balloting was as follows:

Ballots sent to membership	3576
Ballots returned (as of 12/18/55)	1171
For Louisiana	701
For outside of Louisiana	450
No preference	20
	1171

In another poll conducted by the Association concerning the inclusion of lawyers within the provisions of the social security act, those results were as follows:

(a) Do you favor coverage of self-employed lawyers within the Social Security Act on a voluntary basis?
Number voting 1021. Yes 739; No 282 = 1021

(b) Do you favor coverage of self-employed lawyers within the Social Security Act on a compulsory basis?
Number voting 981. Yes 196; No 785 = 981

(c) Do you favor complete exclusion of self-employed lawyers from the Social Security Act?
Number voting 901. Yes 251; No 650 = 901

(d) If your answers above to questions (a) and (b) show that you favor voluntary coverage but oppose compulsory coverage, what is your choice if voluntary coverage is not obtainable? In that event do you favor:
Compulsory Coverage: Number voting 352. Yes 352
or
Complete Exclusion as at Present:
Number voting 388. Yes 387; (1 No)

3576 Questionnaires sent by first class mail on October 31, 1955 to the entire membership. Tabulation

closed December 12, 1955. With the questionnaire was sent communication by President William Waller Young, asking for the attention of the membership with copy of communication of October 6, 1955 of Mr. Joseph D. Stecher, Secretary, American Bar Association, in which was embodied a historical background of the subject matter.

1052 Questionnaires were returned with the above tabulated result.

The attention of the membership of our association is called to the coming annual meeting to be held at the Buena Vista Hotel in Biloxi, Mississippi, beginning April 29, 1956.

An interesting program is being planned and it is my hope that as many members of the association as possible can attend this meeting.

More details concerning the meeting will be included in the next issue of the Journal.

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The Effective Presentation of A Case To The Supreme Court In Brief And In Argument

By Chief Justice John B. Fournet
Louisiana Supreme Court

An address delivered at the Fifth Louisiana Conference of Local Bar Associations Lafayette, Louisiana, January 27, 1956

I feel that I begin my remarks with three strikes against me. First, I am asked to cover in minutes a subject so vast it could serve as the basis for college courses. Second, I am asked to speak on a subject characterized as "well-worn," since there exists a tremendous literature covering every phase of it, dating from suggestive hints given by Cicero in 55 B.C. and culminating in such modern masterpieces as the works of John W. Davis, Charles Evans Hughes, Arthur Vanderbilt, and Herbert Goodrich. Third, I am asked to speak to an audience in which there are many veteran advocates who could no doubt cover the subject better than I.

But if there are three strikes against me, there are nullifying compensations. With a subject so vast, I can hardly be accused of irrelevance, no matter what I say. And the remarkable feature about the tremendous literature on the subject is that so few attorneys avail themselves of it and profit by the knowledge it affords. Last, there are present today many young attorneys who are eager to sharpen all weapons at their disposal for the effective practice of law, while the veteran attorneys who have not grown self-satisfied with what they feel to be the ultimate in ability will be the first to acknowledge the importance of repetition in a matter so vital.

It is possible that a discussion of the manner in which a case is handled in the Supreme Court from the day it is docketed until final judgment would help you to better understand and appre-

ciate the judicial view of the effective presentation of a case on appeal. However, this is a matter entriely distinct from the one assigned, and the breadth of that subject, as well as time limitation, compels that my remarks be confined within narrow scope.

Stated as briefly as possible, the appellate judge wants to know what you are complaining about in the judgment appealed from, and why. He also wants to know what you have to say about the contrary position. He wants, in short, formulated and presented to him, with clarity and precision, directness and simplicity, the nature of your case, the controlling facts, the determinative issues, and your position with respect to them. You cannot effectively formulate and present these to him unless you know the court's rules, know your record, know the law, and know English.

Before I discuss these more fully, I would like to impress you with the fact that the important part of a lawyer's work on appeal is to persuade judges — individuals, if you will, whose human attributes and weaknesses have not vanished within the folds of their black robes — that your view of your client's case is correct. Of course, if you are convinced of the correctness of your view, this is helpful. All too frequently the effectiveness of an argument is lost when it becomes apparent to the court (and after years of experience on the Bench the judicial ear is acutely attuned in this respect) that the lawyer is arguing for effect and without fundamental conviction of the cause he advocates.

Persuasion does not lie in records that lack vital documents and essential testimony; in faulty briefs that have been haphazardly thrown together with no semblance of order and without regard to rules; or in rambling, jumbled oral arguments that evidence no preparation, little concern for the client's rights, and, I may add, the court's time. Work of this type does a disservice to the client and also to the court. The appeal is too often placed in our hands with the attitude: Here it is. I didn't have much time and thought to give it, but I hope you can find something that will help my client win the case. If we do, we are an ornament to the Bench: if not, we are not only a disgrace, but also a louse!

Nor is persuasion possible in an atmosphere of hostile personalities. No man becomes involved in litigation who has not a vital interest in its outcome. He employs an attorney to win his law suit, not to tell others off, and law suits are not won by belittling the shortcoming of judges and lawyers. They are won on

law and facts, and the ability of counsel to bring these properly to the attention of the court. In the best American tradition the lawyer owes respect to the judge, courtesy to the opponent, and fairness to all.

Even a supposedly warranted attack is in poor taste, and futile as well, for it serves to antagonize rather than to persuade the judicial mind. Such tactics actually lend the impression that counsel, unsure of himself and his cause, employs this method to becloud the real issues. In a particularly heated litigation before the United States Supreme Court, Senator George Pepper was moved to say: "I have tried very hard to argue this case calmly and dispassionately, and without vehement attack upon things which I cannot approve, and I have done it thus because it seems to me that this is the best way in which an advocate can discharge his duty to the court." This reflects the high standard of conduct judges have a right to expect of lawyers in argument, both orally and in brief.

The judge has no personal issue to take with you or with your cause. He is sworn to do justice to all men without fear or favor, and, regardless of an impression gatherable from remarks made from the Bench, seeks only the determining facts and principles of law that will ultimately decide the controversy. To this end, I repeat, the judge asks only that you state the nature of your case, give him a dispassionate array of the facts, draw precisely the clearcut issues, and discuss succinctly the applicable law.

As John W. Davis points out in his masterful essay on the oral argument of an appeal, "the human intellect and human justice are frail at their best. It is necessary therefore to measure one man's mind against another in order to purge the final results, so far as may be, of all passion, prejudice or infirmity." The written brief and the oral arguments are the primary tools employed by the appellate judge in measuring the correctness of the justice accorded in the court below. It cannot be too strongly emphasized that the manner in which he performs his function in the judicial process depends almost entirely upon the condition of these tools when you, the lawyer, place them in his hands, for you originate the suit, concevie and give form to the action, prepare the testimony, conduct the hearing, and present to the Bench for adoption the proper solution of the questions raised. The resulting fabric of justice is so much your responsibility that it has been said a Bench can be no stronger than its Bar.

Everything that lends force to your argument and to the impact of persuasiveness on the judicial mind is important. Every aid to clarity of meaning is, therefore, vital. To this end, language is the most valuable tool of the lawyer. Yet the average lawyer today shows an amazing lack of ability in both written and spoken English. Basic accuracy in such matters as spelling, grammar, punctuation, and sentence structure — all so essential to the interpretation and application of law — seems to escape so many attorneys.

As implements of thought these fundamentals are on a par with mathematical theory and scientific formula in other fields. It takes hard thinking and clear analysis to produce the correct concept of and solution to a legal problem, but these are of little value if they cannot be accurately conveyed to others. Unquestionably, inexactness and inexplicitness in expression of thought accounts for much of the controversy in a case. Carelessness of punctuation and of form in expression can lead to material and costly inaccuracies of substance, for we are often called upon to choose between what we think a lawyer intended to say, and the meaning of what he did in fact say. Cases are not won on guesses or surmises, and it should be remembered that arguments are not made for the sole purpose of being understood, but also with the view of being incapable of being misunderstood.

There is, of course, difficulty in choosing language that will awaken in the mind of the reader the same thought that was in the mind of the writer, but the proper application of the fundamentals of English, with the employment of the most simple and direct language, will narrow the gray area of uncertainty, misunderstanding, and misinterpretation. However, this is a difficulty that should long ago have been overcome by the practicing attorney, and I speak not only from general knowledge but also from personal application. I don't mind confessing to you that English is and has long been one of my weak points, and I frequently spend as much time on the English of an opinion as I do on the law, for law is meaningless unless its correct application to the particular issue can be lucidly conveyed.

This view with respect to a deficiency in English is not mine alone. It has been the subject of more than one panel discussion at the annual conferences of chief justices, and is the concern of the judiciary as a whole, as well as of our law schools, as evidenced by a recent survey conducted by Professor A. C. Jordan of Duke University. This survey also disclosed a similar concern

is being today voiced by leaders in other professions and trades. In others such a deficiency is unfortunate. In the legal profession, it is not only inexcusable: it is disastrous. Too many cases turn on so simple a thing as the position of a comma in context.

Those who heard Ohio's Chief Justice Weygandt speak in New Orleans last October may remember that he illustrated his remarks along this line with the story of the judge who, when asked what subjects should be given special attention in the study of law, replied: "There are three: First, English; second, more English; and, third, still more English."

But a knowledge of English, no matter how important to the art of effective expression and literary composition, attains the quality of persuasive precision only when polished by the ingredient of matter-of-fact hard work, for neither rhetoric nor ingenuity in improvision can take the place of diligence. And argument, whether written or oral, manifests wihtin itself whether it is the result of careful thought, thorough research, and infinite pains. If it does, it commands the respect and gratitude of the Bench, more often than not being couched in words that are identical or of similar import in the written opinion, just as the decisions of Marshall and Storey are said to reflect the labors of men like Webster and Pinckney. This is appellate advocacy of the highest order and is eminently more helpful and appreciated tahn an argument that consists chiefly of robust commonplaces and confident assertions that, upon close scrutiny, prove to be substanceless issues and sleight-of-hand distractions.

Turning from these generalities, I would that I could lay before you for guidance in the preparation of your argument some specific rules that are fixed and inflexible and guaranteed to win your law suit if followed. However, in this, as in all opinion among judges and lawyers, there is much disagreement. Arguments can be found pro and con to bolster almost any side of any phase of the subject.

I would venture the observation, however, that there is no law governing appeals that is given less attention and consideration by the lawyer than the rules promulgated by our court to aid in reaching the determinative issue with the saving of the greatest amount of time and effort to all. This is reflected by the fact that if our rules were strictly enforced, few briefs brought to our clerk for filing would be accepted by him.

These rules should be strictly followed. This can be done. I

am always amazed to find that when you seek by writ our review of a case in which you have no appeal of right, your application is drawn with meticulous regard to the explicit of the rules. Yet, once the writ is granted, and in matters where you have an appeal of right, the written and oral arguments are prepared with almost total disregard of these rules.

Contrary to seemingly popular belief, these rules fill no office of mere red tape. They have been evolved by the court out of long experience to promote efficiency in the presentation of an appeal. They are so important that the lawyer who relies on his memory for their form, style, and requirements courts disaster. No argument should be prepared until these rules have been studied and restudied, no matter how often you are called upon to appear before our reviewing tribunal. Given faithful adherence, they will prove invaluable in the drafting of arguments that will make it possible for us t oreadily locate points, authorities, and argumentative material. They will also aid you in reducing what might be rambling discourses to some semblance of legal order. Once this is accomplished your case — if you have a case — is more than half won.

One of our rules requires that briefs be filed within a specified time. Timeliness can, in itself, be a virtue. Familiar excuses offered for failure to comply with this rule are that the attorney has been engaged in work in another court, or has had an accumulation of matters in a busy office requiring prior attention. Mr. Justice Jackson aptly stated the sentiments of all courts confronted with such excuses. In recently granting a motion for an extension of time to file a writ, but warning that such excuses would not be acceptable in the future, he said: "Delayed justice has become little less than scandalous * * * When more business becomes concentrated in one firm than it can handle, it has two obvious remedies: to put on more legal help, or let some of the business go to offices which have time to attend to it. I doubt if any court should be a party to encouraging the accumulation of more business in one law office than it can attend to in due time."

Our court is not prepared to continue its leniency in this respect, and now is probably a good time to warn you as lawyers that we are fast receding from our position of continually overlooking infractions of our rules and of considering cases as best we can. The abuse of our rules in the past has been so flagrant that we are not infrequently faced with an appellee-brief that answers not one issue raised in appellant-brief for the simple

reason that appellee, seeking to meet a deadline without benefit of appellant-brief, has concentrated on answering contentions urged by opponent in the lower court — all of which have been abandoned by appellant, who has conceived an entirely different concept of his case and now argues from that viewpoint.

Even the most simple of rules are made for the purpose of eliciting obedience, and where they are not enforced, they necessarily wrong someone. In this instance the wronged ones are the litigants and the attorney who labors to comply with the rules — the very ones who should not be injured. If in the future, therefore, your client one day loses his right of review because of your laxity in this respect, do not harbor resentment for our purported arbitrariness, or animosity for our supposed unfeeling strictness.

One of the greatest dangers facing you as lawyers is that your argument will not be considered because it has not been adequately covered by an assignment of errors, and yet there are few subjects that seem to trouble the court more and the lawyers less than the faulty assignment. In many instances it is absolutely impossible for the court to determine just exactly what ground you rely on for the reversal of the judgment appealed from, or, in fact, that the issue you attempt to crystalize was even considered by the trial court.

When you reflect that seven men must, in a year, study and reduce to opinion form some 300 appeals, review approximately the same number of applications for writs, and also applications for rehearing, it becomes readily apparent how vitally important it is that you make plain to our mind your exact complaint. Judges working under heavy case loads and against time should not be asked to decide questions the attorney himself apparently does not understand sufficiently to be able to identify and point out.

These assignments of error should also cover only the determinative issues. Inasmuch as there are comparatively few law suits so unusual they involve more than two or three really important issues, the cause is weakened by the assertion of a multitude of doubtful propositions in which there is obviously no merit. They not only reflect the muddled thinking of counsel and his inadequacy of analysis, but often cause the court to look with suspicion on the assignments that may have merit. Only recently we heard arguments in a number of criminal cases similar in

import, where as many as 69 bills were reserved in one case and brought up on appeal. Any reasonable able and sincere attorney could not help but know that not more than one or two of these bills is good, and that, at the most, not more than three or four merit the time the court wlil have to give to their consideraion.

Along this same line, a multiplicity of authorities may also weaken rather than strengthen your case. Authorities relied on by you should be absolutely in point and should not be cited even then unless their exact bearing on the argument can be pointed out. A point of law already decided by us need be supported only by our previous decisions without embellishment of authorities from other jurisdictions, unless your object is to try to convince us our previous holding was incorrect. A proposition of law that is so well-settled it is fundamental needs no citation of authority, but the court, at the same time, does not want you to dismiss the authorities relied on by your opponents with the mere statement that you are not in point. We want to know why you think so. It is also helpful if you give us the full citation and not, for example, the Southern Reporter citation only. But above all, do not misquote a citation, garble a quotation, or use excerpts from one part of an opinion that are weakened or nullified by other parts. Covering up gains you nothing but a reputation for presenting arguments to the court that cannot be accepted until every citation and every quotation has been checked.

Cicero is credited with the truism that "No man can be eloquent on a subject he does not understand." This is particularly applicable to the presentation of a case on appeal. You waste your time and the court's time if you attempt to argue your case without a thorough knowledge of your record and your brief: a knowledge so profound you do not have to read your brief to us and do not have to refer to either the brief or the record during the course of the argument unless a judge asks to see an exhibit or document. You should then be able to produce these at once, without fumbling or searching. This you cannot do if you have only skimmed the record the night before, or glanced through it as you await your turn to present argument. Only recently an attorney, asked a question, announced with puzzled expression: "Well, Your Honor, it has been more than two years since I tried the case, and I just don't rightly remember." The conclusion was inescapable that he had never glanced at the record prepared after trial.

I will say very little about the actual presentation of oral argument. All that I would say was anticipated many years ago by John W. Davis and eloquently expressed by him in language more graphic and logic more compelling than any within my grasp. In his masterly exposition of oral argument on appeal in a lecture delivered before the Association of the Bar of the City of New York in 1940 he lays down what he terms the "ten commandments" of oral argument, and in discussing these demonstrates clearly why there can be no good advocacy without orderly oral presentation. My only quarrel with what he says is that he makes "Know your record from cover to cover" the ninth of these commandments. I would place it first. There are, however, a few points covered by Mr. Davis to which I would like to give added emphasis.

The objective of oral argument is to get to the court as concisely as possible, in as brief a time as possible, and as clearly and accurately as possible, the controlling facts and your analysis of the issues. Brevity here cannot be over-stressed, nor can the importance of such a statement. Your assumption should be that the court has never before heard of your case— and in all probability it never has — and that this will be the first time the judicial mind is alerted to the nature of your cause. One or two sentences should, generally, be sufficient to tell the court exactly what your suit is all about. In addition, the court would like a thumbnail sketch of the basic ground on which your suit is predicated, as well as the lower court's determination of that issue. The statement can be so simple as: "This is a suit for divorce on the ground of two-year separation. The defense is reconciliation. The trial judge ruled the evidence sustained the defense and denied the divorce."

The opening sentence and the first five or ten minutes are, in my opinion, the crucial time in the oral argument. Within this period, if you have not stated the nature of your case, the pertinent facts, and the disputed propositions of law with the clarity that makes them readily understood by every judge on the Bench, your plausible argument becomes a jumble of meaningless phrases to the judicial mind, your legal conclusions fall on confused ears, and you lay yourself wide open for the barrage of questions many of you resent. While not necessarily true in all cases, it is generally conceded that questioning from the Bench is the first indication you have failed to present your argument in a manner that makes your position clear to the court. And

even though you may feel you have, you should, nevertheless, welcome such questioning for an even more important reason. Your brief may not contain an adequate answer to the question that puzzles the judge, and this is your only opportunity to satisfy the judicial curiosity in this respect, for you cannot be present in our consultations. Furthermore, it may well be the deciding factor in your case, and to have it thus pinpointed and set at rest wins the law suit for you.

It has been my experience that lawyers on the whole react commendably under judicial questioning. As Mr. Davis points out, they are frequently less annoyed by questions from the Bench than the other judges!

Because many lawyers discount its importance, I would like to stress that oral argument is a most important and valuable part of the presentation of a case on appeal. The judges, pressed for time, study as a rule only the briefs and records in the cases assigned to them. The oral argument is, therefore, the only way of carrying the controlling facts and issues straight to the mind of the entire court — your one chance of catching the interest and attention of all of the judges. You should seek, therefore, to make your argument so clear, forceful, and effective that if the written opinion does not conform to your conception of your case ,the remaining judgse will be immediately alerted when the written opinion is passed around and make an independent study of the case that not infrequently results in an entirely different conclusion.

What you say is important, and how you say it is important. You should remember that you are not arguing to a jury with the hope of swaying them to your view by the sheer force of your eloquence. You should also remember that in the limited time at your disposal you cannot hope to cover more than one or two salient points. Be sure they are the most telling. John J. Sullivan, who was once Chief Justice of Nebraska, is credited with having developed an appellate technique in oral argument that was most effective, and yet extremely simple. He rarely ever used more than 10 or 15 minutes in presenting a case. He would take one, or at most two, of the principal points, lay them out clearly and convincingly, and say to the court: "On this ground there is error in the record and the judgment must be reversed. There are other grounds thoroughly covered in brief that Yours Honors may consider at your leisure."

You may feel that I have been unusually sever and critical. If so, this is because my remarks have been directed at those faults I have found to be most detrimental to your case under review. Thus focused, they can possibly be best corrected to your benefit. In spite of any impression I may have created to the contrary, however, we do have good lawyers, we are favored with excellent briefs, and we do hear outstanding oral arguments.

I have been particularly impressed with the ability and demeanor displayed by many of the younger members of the Bar in their appearances before us. They are, in brief writing and in the presentation of oral argument, outstripping many of the older members who, instead of growing in stature with experience, have receded from standards formerly held. These younger members, as a rule, pay faithful adherence to our rules. They have their records at their finger tips. They rarely fail to state clearly the facts and points at issue, with the elimination of all that is immaterial. They handle themselves in the courtroom with commendable poise and assurance. They can produce unhesitatingly any document the court desires to inspect. They can point unerringly to all pertinent testimony in the record on any salient point. They have ready answers for questions put to them by the court, and these are courteously and respectfully given. If these younger members presage a new era of which they are the pioneers, then the Bench and Bar are indeed on the threshold of the Golden Age of the Legal Profession.

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The Tidelands And The Louisiana Personal Injury Lawyer

Address by Leon Sarpy
at Lafayette, January 27, 1956, Before the
Conference of Local Bar Associations

A. INTRODUCTION

The vast search for and discovery of minerals under the Gulf bottom off the Louisiana Coast has been welcomed by the people of Louisiana as a *valuable addition to the economic welfare* of the State, as indeed it is. Considered from an asset viewpoint, marginal Louisiana is located on the summit of the Gulf excrescent which extends from Brownsville, Texas, along the marginal shores to Tampa, Florida. Adequate seaports, inland waterways and availability of raw materials, coupled with a suitable climate, make the exploration of the minerals as close to ideal as the term permits. And when we add to that the fact that besides the oil and gas, we have salt, sugar, water and sulphur in almost unlimited reserves and available quantities, it appears that the commercial and *economic activity of the State will continue* for quite some years to come. A casual glance at the long list of industrial plants hat have been established at Lake Charles, Baton Rouge and New Orleans within the past twenty years is proof sufficient.

However, these economic benefits are not without their *legal difficulties and complications.* We must take the bad with the good.

With literally thousands of vessels plying the marginal shores of Louisiana in quest of minerals, *a large number of personal injury claims is inevitable* and will increase as exploration continues, with no apparent let up at least in the foreseeable future. The result is that both State and Federal Courts will be kept busier than ever with personal injury litigation, as well as many other disputes of a maritime nature, and hence the amount of effort to be devoted to this work by various counsel for the claimants as well as the defendants will consume far more time and effort than off hand meets the eye. This situation, coupled with the fact that the availability of graduates from the Law Schools

is considered by many in authority as being inadequate to supply the growing demand for Attorneys at Law in this section of the country, will cause the legal profession in this State to have its manpower taxed for quite some time to come, because the demands upon counsel for claimants, defendants and underwriters will increase considerably in this already active field. My own feeling is that young Attorneys today have a greater professional opportunity than ever before in Louisiana as a result of our marginal shore operations.

B. POTENTIAL CAUSES OF ACTION

The exploitation of the coastal waters is going to place thousands of employees in marginal shore occupatins in positions *increasingly vulnerable to personal injuries.* It is unnecessary even at this early stage to pursue that probability any further, except to observe that with every economic and scientific advance *there occurs a concomitant change in the law,* sometime by both legislatures and courts.

When a person injured is an employee, usually the plaintiff's counsel is interested in the possibility of proceeding against the employer as well as against any financially responsible third persons. Further, the plaintiff's attorney wishes to proceed and seek the relief that is most likely to bring his client the greatest of monetary rewards and satisfaction. It is obvious that if there is a choice of proceeding against an employer under the State Compensation law or under the Congressional Jones Act, the Attorney is going to choose a jury under the Jones Act if at all possible *because of greater recovery prospects.* On the other hand, the defense attorney is going to scrutinize the proceedings very carefully with a view of raising whatever objections to the jurisdiction he might deem proper, in order to restrict his client's financial exposure.

In the analysis of a personal injury matter, therefore, any counsel whether for plaintiff or defendant in light of the decisions of the Federal Courts, is interested principally in *three legal issues,* namely (a) whether or not an *employer-employee relationship* exists; (b) if so, what is the nature of the *employment, is it maritime or non-maritime,* is the employee a seaman or is he a landlubber; and (c) the locality of the injury, whether *on navigable waters of the United States,* or on land.

The courts have been faced with many of the resulting problems. My colleague, Mr. Carrere, will present to you some of the

more interesting situations *that have actually arisen* and will discuss the outcome. It will be my purpose this morning to discuss wth you in brief, preliminarily and the development of some of the more *important elements of the five different causes of action* that are usually available in personal injury cases in marginal shore work, namely, claims filed (1) under the General Maritime Law, (2) in tort under Article 2315 of the Civil Code, (3) under the Jones Act, 46 U.S. Code 688, (4) under the State Compensation Act, La. R.S. 23:1021, and (5) under the U.S. Longshoremen & Harbor Workers' Compensation Act of 1927, 33 U.S. Code 901.

(1). General Maritime Law.

If a man is a seaman, his remedy under the General Maritime Law against the vessel and her owners is as old as the Admiralty law itself, and proceded by many centuries the Declaration of Independence, for this remedy goes back to early Mediterranean Marine history. It is well to recall that the word "Admiralty" comes from "Amir-al-bahr" which meant in Arabic "Commander of the Sea," a figure with which Western Europe became familiar during the time of the Crusades. Under the laws of Oleron and the Hanscatic League, seamen were recognized as having a maritime cause of action for their personal injuries, resulting from the vessel's unseaworthiness. In addition, where a seaman is *injured or becomes ill through no fault of his own,* he may claim maintenance and care until he has reached his maximum recovery, and in many instances his wages also until the end of the voyage or the duration of the Articles of Seamanship.

Who is a seaman is of course a legal field of its own. In early American Maritime history, when ships were small compared with those of today, not only deck hands but also cooks and stewards were recognized as mariners. Today the word "seaman" has been expanded to apply to a person who is *regularly employed aboard a vessel on the high seas regardless of the nature of his duties.* Therefore, such marine employees as radio operators, stewards, musicians and the like are now all classified as seamen, *and as long as they are employed on an ocean going liner.* Hence, the jurisdictional problems of Maritime law are comparatively few in actions by employees against the ocean going vessel, her owners and underwriters. Many of you have no doubt noticed the attractive advertisements of recent years concerning the SS UNITED STATES and the varied number of employees aboard, extending to the hostesses, waiters, technicians and other

deep sea employees who have no primary concern with the navigation of the vessel. There is little doubt that all such persons who are employed on the high seas are seamen in the eyes of the law.

In our problem, however, the solution is not that simple. We have all types of employees along the marginal shores of the State, *who divide their working time* between duties on board vessels as well as work performed ashore, *and what is also significant,* work on rigs out over the water but *anchored to the floor of the Gulf.* There are far too many types and classes to enumerate all. There are employees known as rough necks who do not go into action until they reach a derrick out at sea, yet must be transported aboard a vessel, and while on board such vessel they might be asked to handle some lines or to perform other incidental duties of a maritime nature. There are cooks sometimes working on the rigs both at sea and ashore, and sometimes aboard a floating vessel. Many are employed on the comparatively new invention of the *amphibious* rig *which can be floated from location to location, but when* stationary and "spudded in" at a drilling site over water, cannot move. The question then arises are these men seamen? Are the rigs considered to be vessels in the eyes of the law for purposes of maritime jurisdiction?

(a) Seamen.

As we have seen, if an employee can bring himself within the legal meaning of a seaman, he might consider a proceeding to claim damages in Admiralty under the General Maritime Law, as well as under the Jones Act. He may also claim the traditional maintenance and cure and even wages, in certain situations. This seems to present a most complicated problem in view of the recent reversal by the Federal Supreme Cour tof the Fifth Circuit's decision in the Martin case, after the Appellate Court had reversed the District Court. There an oil well worker injured on a vessel was declared by a jury to be a seaman. Mr. Carriere will discuss this case with you in greater detail. Suffice it to say here that as a result of the Martin decision, *it is difficult to designate any employee who may not be classified as a seaman,* if he is injured while working on a vessel over water in these coastal exploitations. There is scarcely an Attorney who is in a position to render any sort of *a definite opinion* under the present state of the jurisprudence.

(b) Location.

The traditional test of location in Admiralty is not difficult. Most waters along the Louisiana coast, including bayous, are connected wtih the open sea, and accordingly are navigable waters of the United States, because ever since the Act of Congress of February 26th, 1845, as interpreted in the landmark decision of The Genessee Chief vs. Fitzhugh by Chief Justice Roger Brook Taney in 1851, 12 How. 443, there has never been any doubt about this rule of navigability which changed in this country *the ancient English norm of ebb and flow.* Hence, there are few bodies of water, if any, in South Louisiana which are not within the Admiralty jurisdiction. The three mile and ten mile limits are therefore of no consequence for Admiralty jurisdiction purposes.

(c) What is a Vessel.

The next question is what is a vessel within the meaning of the Admiralty? It was easy to conclude when we went to school 10 or 20 or 30 years ago, that a vessel was generally defined as *any floating object used for transportation and commerce whether self propelled or not.*

The advent of the seaplane brought on the amphibious test announced by Benjamin Cardoso when a Judge on the New York Court of Appeal in Rienhardt vs. Newport Flying Service Corp., 232 N.Y. 115, 133 N.E. 371, 18 ALR 1325 (1921), wherein he held that a seaplane is a vessel when afloat and not a vessel when aloft. That decision suggests the reverse proposition in connection with the vast drilling platforms which are floated from location to location, and which when drilling, are as securely attached to the ground as any land structure. *Surely they are not aids to navigation such as beacons.* When are these vessels actually vessels and when are they not? The point is material in cases of damage to property as well as personal injury cases for if there is no vessel or aid to navigation involved, there is not Admiralty jurisdiction, such as where a gas line owned by a defendant sets fire to a rig firmly in position over water and the owner files in Admiralty. Does Admiralty have jurisdiction? That point is not settled by the Appellate Courts, although the Eastern District has overruled an exception to the jurisdiction in such a situation, in Golden Meadow Well Service Company vs. Gulf Refining Company, No. 2269 in Admiralty.

(2). Article 2315 of the Civil Code.

Any cause of action in tort that arises on land or on water,

in the absence of a relationship of employer-employee, may of course be asserted *under the common law* or under the law of the particular State in which the tort occurred. There is no problem in so far as jurisdiction is concerned for the action may be filed on the the Civil side where there is Federal jurisdiction if not in Admiralty, *or it can be filed in the State Courts.*

(3). The Jones Act.

In 1920 Congress enacted the Jones Act to supplement the relief granted by the General Maritime Law, which provides in substance that seamen may sue their negligent employers at common law and obtain the benefit of a trial by jury. We might observe that trial by jury does not obtain in Admiralty except in some cases arising on the Great Lakes. The Jones Act therefore does not grant any new causes of action. It merely provides for a trial by jury on the civil side for the benefit of seamen only. The Martin decision goes a long way in extending the meaning of the word "seamen" as Mr. Carrere will point out, and the availability of the Jones Act is therefore broadened. As we have seen, the Jones Act is, in most cases, the desirable remedy from the plaintiff's viewpoint.

(4). State Compensation Cases.

The original Burkes-Robert Bill of Louisiana, Act 20 of 1914, now R.S. 23:1201, was adopted, as all of you know, for the purpose of permitting relief to employees who have been injured in the course of their employment, free of the legal necessity of proving negligence on the part of the employer. Without going into the refinements of the State Compensation Act, its application to Maritime injuries *when originally adopted, was somewhat in doubt.*

It was not until 1916 that the Supreme Court of the United States handed down the often cited case of Southern Pacific vs. Jensen, 244 U.S. 205 (1917), in which an employee stevedore *and hence not a seaman,* was injured while working on a vessel afloat on a navigable waterway. The question was whether or not this employee could recover under the State Compensation Act of the State of New York. The contention was made before the Supreme Court of the United States that the Admiralty jurisdiction was exclusive *and that the State Compensation Act could not apply to injuries occurring on navigable waterways.* The Court handed down what appeared to be a complete answer to the question when it held that the State Compensation Act could

have no effect as to injuries occurring on navigable waters for such jurisdiction was only within the Federal Government under the Constitutional grant to Congress of exclusive jurisdiction over matters of Admiralty in Maritime jurisdiction. As we will see a little later, the Supreme Court of the United States has more recently qualified this doctrine and demolished the apparent boundary line so that literally and figuratively the waters are quite muddied in this regard. Since the Davis decision in 1942, wherein the employee in a bridge dismantling project was injured while temporarily working on a floating barge and his claim under the State Act was recognized, *it seems that the employee may have his* choice between the State Act and the Longshoremen's Act, at least in ultimate effect.

(5). U.S. Longshoremen & Harbor Workers' Compensation Act.

In 1927, after two abortive legislative attempts to supplement the decision of the Federal Supreme Court in Southern Pacific vs. Jensen, Congress adopted the Longshoremen & Harbor Workers' Compensation Act 33 U.S. Code 901, in which it provided relief for all employees injured while working on navigable waterways *and who are not seamen.* The portions of the Act on the question of jurisdiction read as follows:

> Sec. 905. Exclusiveness of liability. The liability of an employer prescribed in section 904 of this chapter shall be *exclusive* and in place of *all other liability of such employer to the employee,* his legal representative, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from such employer *at law or in admiralty* on account of such injury or death, except that if an employer fails to secure payment of compensation as required by this chapter, an injured employee, or his legal representative in case death results from the injury, may elect to claim compensation under this chapter, or to maintain an action *at law or in admiralty* for damages on account of such injury or death. ******

This Act, viewed in light of the ruling of the Federal Supreme Court in Southern Pacific vs. Jensen, was thought to afford a rather complete answer to this particular jurisdictional problem. If the Harbor workers were injured on land, the feeling was prevalent that in order to recover from their employers they could only resort to the available State Compensation Act; if they were injured on a vessel afloat, they could only resort to the Longshoremen & Harbor Workers' Compensation Act.

Parker vs. Motor Boat Sales Co., 314 U.S. 244 (1941), *strengthened this view*. There a janitor employee of a small boat store drowned on a test run in a small boat. His widow sued under the Federal Longshoremen's Act. The Supreme Court ruled that the nature of the employment at the moment of death was controlling, irrespective of his habitual duties on land. The occupation and location of the employee at death seemed of paramount importance.

However, the hope of solution apparently intended by Congress, was clearly blighted the following year by the Supreme Court in Davis vs. United States, 317 U.S. 250 (1942). There the bridge dismantler was killed while inspecting steel on a barge. His widow sued under the Washington State Act and the defense was that the States Act could not apply under existing jurisprudence. The Supreme Court went into the nature of the employment and came up with the conclusion that where an employee is basically a land worker, and is injured or killed on a vessel on a navigable waterway, the State Compensation Act can well apply if the claimant so chooses, and thus gave the State courts considerable latitude in dealing with such cases. The Supreme Court said in the Davis case:

> There is, in the light of the cases referred to, clearly a twilight zone in which the employees must have their rights determined case by case, and in which particular facts and circumstances are vital elements. That zone includes persons such as the decedent who are, as a matter of actual administration, in fact protected under the state compensation act.
>
> * * * * * *
>
> Not only does the state act in the instant case appear to cover this employee, aside from the constitutional consideration, *but no conflicting process of administration is apparent*. The federal authorities have taken no action under the Longshoremen's Act, and it does not appear that the employer has either made the special payments required or controverted payment in the manner prescribed in the Act. 33 U.S.C. Sec. 914(b) and (d). Under all the circumstances of this case, we will reply on the presumption of constitutionality in favor of this state enactment; for any contrary decision results in our holding the Washington act unconstitutional as applied to this petitioner. A conclusion of unconstitutionality of a state statute can not be rested on so hazardous a factual foundation here, any more than in the other cases cited.

Why the claimant did not proceed under the Federal Longshoremen's Act is not clear. The decision affords *no line of demarka-*

tion for the "twilight zone". In my opinion the Court has read out of the Statute the word "exclusive" and substituted the meaning "concurrent". This decision has been followed in principle in many subsequent decisions and apparently is not line for legislative change.

In reviewing the five foregoing situations in retrospect, we must necessarily come back to our original premise that the important elements in deciding jurisdictional questions in Maritime personal injuries are three, namely (a) whether or not an employer-employee relationship exists — if it does not exist, remedies 4 and 5 respectively under the State and Federal Compensation Acts are unavailable and the claimant must resort to an action in damages under the General Maritime Law, or under the State law; (b) the nature of the employment in view of the Davis deciison, for if the employee is basically a land worker he may obtain relief under the State Compensation Act or under the Federal Longshoremen & Harbor Workers' Compensation Act, and he appears to have his choice between the two; and whichever assumes jurisdiction, the courts will apparently follow, as long as the Davis decision is the law; and (c) the locality of the injury, namely whether or not the same happens on a navigable water or on land. With the exception of a seaman, if the accident occurred on land there is no resort to Admiralty. If it occurred on the water Admiralty will in all probability have jurisdiction, if invoked by the claimant.

As an amusing side light, in claims for maintenance and cure, it is very interesting to observe that seaman who are injured on shore do have the right to claim maintenance and cure if the injury takes place while returning to the vessel. The jocular extent to which the courts have carried this doctrine becomes apparent when we consider the decision by the New York Municipal Court in Koistinen vs. American Export Lines, 1948 AMC 1464, wherein it was held that a seaman on an American ship in a foreign port, who had been visting a lady friend in her bedroom and was interrupted by the sudden and somewhat unexpected return of the lady's husband, decided on the nearest window as the expeditious means of self preservation, and fell to the ground below in the attempted escape and fractured his ankle. He claimed maintenance and the court held that he was returning to the vessel's business, and allowed recovery. Such as an extreme example of the extent to which the courts have gone in granting awards to wards of the Admiralty.

CONCLUSION

The foregoing is intended at best to afford you a brief generalization of the various situations that should be considered in determining causes of action and defenses in personal injury cases arising along the marginal shores of Louisiana. The situation is one for which the law offers no early prospect for a panacea. The resulting uncertainty is one of the reasons why the law is so very intriguing.

Each case must therefore be very carefully analyzed with regard to the three situations that we have raised, and each case must be considered in light of the five jurisdictional possibilities that I have described in the determination of a proper forum.

The question will very properly be asked, "Why should such overlapping and contradiction exist in the law and what can be done about it?" The overlapping and contradiction are ultimately due in a very large measure to our dual system of Government, just as our numerous complex problems in the field of Federal Jurisdiction and Procedure are attributable to our division of powers as specified in the Constitution. Curing our situation could at least in theory, be accomplished by Federal Legislation, but from a practical standpoint at least three attempts have fired wide of the target. It is safe to conclude that no early answer to the problem is foreseeable. As a consoling thought it is well to observe that if the continued integrity of our Nation among the world powers is dependent on our dual system of government with all of its attendant trouble, expense and inconvenience, we will all agree that it is a great bargain and well worth the price.

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Participation By Local Bars In Our Integrated Bar

By Richard B. Montgomery, Jr., of New Orleans

An address delivered at the Fifth Louisiana Conference of Local Bar Associations Lafayette, Louisiana, January 27, 1956

When your chairman requested me to make this speech, I debated for considerable time whether I should make it or not. I have appeared before the bar on several occasions speaking for an increase in the dues and speaking on the subject which I am supposed to speak to you about today, namely, a closer integration of the local bars with the integrated state bar. This is a difficult problem to talk about.

All local bars in the State of Louisiana are voluntary. The state bar is an integrated bar which everyone who wishes to practice law must join. I have talked to many, including our very good friend, Judge Hardy. It is very apparent that a strong state bar is a necessary element to complete the administration of justice in a state. It is a known fact, and I do not think it demands reiteration, that the reason the English speaking people of the world have achieved liberty, a jury system and a fair and impartial trial is because of the courage of the bar. If we go back to the days of Jeffries, the hanging judge of England, we will find that history reports that two lawyers had the courage to stand up to Jeffries and stop the bloody assizes.

It is very self-evident that you have in Lafayette, Baton Rouge, New Orleans, Shreveport, Lake Charles and many other places strong local bars. It is very evident that the state bar can only meet at the most twice a year. You have a Board of Governors which is elected by the Supreme Court judicial districts. To this is added one representative of L.S.U., Tulane and Loyola from the faculty. Also a member is the Louisiana Law Institute representative. Is this a sufficient representation of the lawyers in this state?

It is to be remembered, of course, and to be considered very carefully, that before the time of Governor Huey P. Long the bar was a voluntary organization such as are the local bars. Then

Long, because of reasons of his own about which I make no pretense of saying whether they are right or wrong, decided he would organize an integrated bar. You will even remember that the Board of Governors at that time was elected at the election and were voted on by all the people and not only by the members of the bar. Then the law was changed and the lawyers at the convention elected a nominating committee which voted upon the president, the president-elect and the secretary-treasurer. However, still the members of the executive committee are elected from districts. These districts are in many instances very unrepresentative of the people who are most interested in the bar. Located in one district are rural districts which have no local bar associations and cities which have very powerful associations which meet each month and who police their membership, and these powerful local bars are most interested in bar work and in the development of the bar as a whole.

It is most essential, in my opinion, that each district be represented as it now is on the Board of Governors of the state bar association. It is also, in my opinion, essential that the bar associations, whether in the country or the city, should be represented. I want to make one thing very positvie and clear to you — that, whereas I was born in New Orleans, when I use the word country I am not in any sense being derogatory of the lawyer who practices in small towns. In my opinion after having been president of the bar and interested in bar work, I believe, in most instances, the lawyers who do not practice in the big cities like New York and others have a much fuller understanding of the necessity of a bar association and of their obligations to the citizens of their community.

One of the most interested bar workers, with his consent, had this to say:

> "These younger men in the practice note with cynacism that lying, cheating and chicanery seem to go unnoticed or at best laughed at or shrugged at.
>
> "They have lost confidence in our grievance procedures or the enforcement of ethical standards.
>
> "They see income slashed to pieces by insurance adjusters, claim handlers, bill collectors, 'collection agencies,' family counseling agencies, parish service officers, labor department counsellors, guidance agencies, family court collection services, realtors, surveyors, mortgage companies, lease man, architects, C.P.A.s, and a galaxy of other operators.

"These younger lawyers feel helpless and alone. These regard the 'bar' as dormant or at best a 'social' outfit given to a dinner or social function."

There is merit to what my friend, Dick Cadwallader, has to say, but I do not think he has laid the blame at the proper door. I do not see how a bar whcih is not properly integrated with its local bars and does not have money enough to do the things can exist. Our proposal for dues was to give the young lawyer a break. It is essential that a bar like Baton Rouge with a lawyer like that should have representation somehow, somewhere in some manner in the management of the integrated state bar.

My friends, I show you something, and I am not showing you this for pride, because I feel that the bar is so much greater than any individual that he has the right to talk about history and history is what counts. History is something that the average American does not think of. I am going to read you something from the annual report of the Judicial Council of the Supreme Court . . . a Council which has become very important, and, why has it become very important? Because the bar persuaded the Supreme Court to create it. The Supreme Court says:

"Associate Justice Wynne G. Rogers, the first Chairman of the Section, had died during the previous year and the undersigned, Chief Justice Fournet, had been elected to succeed him. By motion duly made and seconded the chairman was authorized to appoint a committee to study the formation of a Judicial Council in Louisiana, and the committee was to report its recommendations to the Section at its next annual meeting. The following persons were appointed:

Judge J. Cleveland Fruge
Judge R. M. Taliaferro
Judge Carlos G. Spaht
Judge J. B. Nachman
Richard B. Montgomery, Jr.

The important point is this language, and I congratulate our Chief Justice:

"The same committee appeared before the Supreme Court of Louisiana urging the court to create a Judicial Council by Rule of Court."

I believe that anyone who will take the time and trouble, and I am sure the Chief Justice of the Supreme Court of Louisiana will agree, to understand the functions of the Bar Association, they will understand that we are striving, struggling and working to do away with the very things which Dick Cadwallader says are in the mind of the younger lawyer.

Another lawyer, Judge Yarrut, said to me in the car coming down to work: "My friend, the lawyer had better well accept the words of Benjamin Franklin when he said, after signing the Declaration of Independence:

"We must all hang together, or assuredly we shall all hang separately."

In my opinion, unless we make a bar association through our efforts which is strong, well integrated and represents the members of the bar, we are going to lose our life, liberty and pursuit of happiness and our property. I believe that I have stated as strongly as could be possible the necessity for an integration of the local and state bars. After all, the local bars are the same thing as the local representatives of our government. They are more responsive to the will of the lawyers than is a state bar which meets at the most once a year. I think it is absolutely essential that there be some theory or system worked out by which local bars, be they parish wide, district wide or city wide, shall have some say in the government operation and particularly the principals of the state integrated bar.

I feel sure that the Supreme Court will go along with any plan which is devised which is satisfactory to the lawyers. They have shown it. They have cooperated thoroughly, as I have said, in the development of a Judicial Council recommended by the bar association and to any other thing for the benefit of the bar which was brought to their attention since I have been interested in bar work.

I now feel like the rooster in the barnyard. This rooster had become old and the farmer went to his wife and said, "we don't have enough fertile eggs. I'm going to get a young rooster." So they put a young rooster in the barnyard. This happened three times, and finally the conversation with the third young rooster was as follows:

"Sir," said the old rooster, "I don't want to stand in your way in your relationship with the hens in this barnyard. You have taken them away from me because you are young, virile and proud, but I still have a little pride left. Now look, what I want you to do is to chase me and fuss at me furiously and after the third time you chase me around the yard, I will fly out of the barn yard and save my pride."

The young rooster agreed and so they proceeded. The farmer saw the young rooster chasing the old rooster so he got his gun and shot the young rooster. Then he went in and told his wife, "This is the third time I have had to

shoot a young rooster for chasing another rooster. There's something queer in the barnyard."

The old rooster said a little experience (and knowledge) is worth more than anything else.

I am trying to use my experience of thrity years in being interested in the bar work to make these suggestions to you. It could be that it is not the proper way to do it, but at least it is offered to you in humility out of experience.

The American Bar Association was being called a rich lawyers' club until they set up the constitution and by-laws and adopted a theory of a House of Delegates. In the American Bar Association it is provided that control and administration of the association shall be in a House of Delegates. It provides that there shall be state delegates from the American Bar Association, State Bar Associations, delegates and such local bar association delegates as may be chosen by nad from local bar associations. Fifteen delegates are chosen by the general meeting. It then goes on to say that former presidents of the American Bar Association shall also be in the House of Delegates.

It seems to me, and I say again that this is in humility and in experience, that we could make better use of our former presidents than we have done. You have LeDoux Provosty, Cuthbert Baldwin, Benny Wolf, Alvin King and others who have vast experience. In naming these, I am in no sense leaving anyone out. I am merely citing the ones that in recent years I have known. It is true, as Judge Hardy has said, that it is going to be difficult to give representation in an integrated bar to local bars which are not integrated. But it seems to me that somewhere between the American Bar and the Oklahoma Bar plan, which I will read to you, there is some place where a compromise can be met as was done in Philadelphia when the United States of America was set up.

Some people may say that we are irreverent in comparing situations, but, after all, if liberty is not preserved at the lower levels, it will never be preserved at the higher levels.

It seems to me that at the bar association an executive council should be elected, as we now do, consisting of the members and the qualifications which you already know about from your own knowledge and from this speech. These members of the executive council should be members of a House of Delegates set

up. The House of Delegates should be elected on the basis of one from each bar association which has as dues paying members over 65% of the members of the locality for which it is organized and which holds at least six meetings a year; a member from each district, court district, duly elected at a meeting to be held in that district immediately after the bar association. The House of Delegates shall have the right to propose and initiate matters pertaining to the bar association. The executive committee selected as it is now shall have the right of veto of any measure or proposals initiated by the House of Delegates. The executive committee shall have the right to refer matters that it thinks important to the House of Delegates for its approval or disapproval. However, the disapproval of the House of Delegates shall not be final. In the case of disapproval by the House of Delegates, the executive committee shall then refer the matter to the bar in a referendum.

In this manner we will give the lawyers in the state who do not attend, as my dear friend says, conventions for the sake of sociality, a chance to be heard in the government of the most important party that there is in the world — bar associations.

The bar association actually is no different from the administration of a city. If you do not have money enough to provide the proper detectives, the proper enforcement officers, you are going to end up with no enforcement, and it is essential that the local bars have the necessary say and influence and representation in the state bar to obtain this.

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Local Aspects of Public Relations

By Paul C. Tate, Mamou, Louisiana

An address delivered at the Fifth Louisiana Conference of Local Bar Associations Lafayette, Louisiana, January 27, 1956

The relationship existing between the individual lawyer, the local, state, and national bar associations, and the legal profession as a whole on the one hand and the public on the other is something we can improve or make worse. But we cannot eliminate it.

What one group thinks of the other group depends a great deal upon that "other". The public has never been greatly concerned about what the legal profession or the individual lawyer thinks of the public. And too often, the legal profession has acted as if it felt the same.

We, as a profession, have been granted an exclusive franchise on the legal affairs of the people in our respective communities. This franchise depends upon the continued convenience and necessity to the public of the services we render. The public giveth and the public taketh away.

Public relations, therefore, determines the status of our persons, our profession as a whole, and the effectiveness of our associations.

Each local bar association, as one of its main functions and as an obligation to its members, must keep itself strong and represent the lawyer to the public as an educated, honest, and worthy public servant dedicated to the administration of justice. This should not be hard to do.

The maxim, "by thy works thou shalt be known" is certainly true, but it has long been recognized that advertising has more to do with the sale of a product or commodity than does its satisfying quality.

This reminds me of a little something I heard a short time ago. It seems that, on the Camel cigarette commercial program, the word "lucky" is taboo. So, the script writers must use phrases such as "you favored child of fortune" instead of the more spontaneous and meaningful "you lucky kid." The word

"strike" is also taboo and one advertising agency cancelled a sport interview of the national bowling champion rather than risk a slip.

The taboo in legal circles is the word, "advertising." It has been said by some very sincere members of our profession that advertising our profession is undignified. That if the profession renders a real service, as it certainly does, then "advertising" is unnecessary.

The word "advertise" is derived from the Latin word meaning to turn, hence the word means "calling attention to." Certainly, a profession can call attention to itself in a dignified manner and in perfect good taste.

Certainly the celebration of the anniversary of the late Chief Justice John Marshall sponsored by the American Bar Association and many state bar groups was dignified and in good taste. And, most certainly this was calling attention of the public to our profession and its contribution to our nation.

The television program, "Justice," sponsored by the *National Legal Aid Society*, is in good taste — and it certainly is advertising our profession and its dedication to justice — for everybody.

I am not advocating the extensive use of the term, advertising, I believe the phrase "public relations" is more dignified and avoids the commercial sound that advertising carries.

But we grasp a fuller meaning and significance of public relations if we all understand that it is a form of advertising — calling attention to our profession — making known to the public the meaningful role which our profession plays and should play in the local, state, and national life.

With this understanding of what the public relation program of a bar association shuold accomplish, we turn to specific methods of accomplishing this result:

(a) The newspapers and radio should be furnished with news releases covering all activities of the local association, its executive board, and its committees which have news or publicity value.

(b) The state bar association and the American Bar Association have material suitable for presentation on radio and television — either in the form of films, records, or scripts. Free time is always available for this purpose.

(c) Civic groups and clubs are always anxious to fill a

program with a talk by a lawyer. Your local group should canvass its membership and make a list of legal, political, and patriotic subjects which can be distributed to the program chairmen of the local civic groups.

(d) Church pastors will welcome sermon suggestions on the role of the legal profession in America and will be happy to work these in their sermons or addresses on or near national holidays.

(e) The local bar should volunteer leadership for the conduct of public forums on new laws, community proposals, and law reform.

(f) "Freedom awards" or "justice awards" should be presented to outstanding lawyer contributors in this field. These will serve to reward the lawyer but principally, this will call the public's attention to the profession's contribution to the American way of life.

(g) The Louisiana State Bar Association has already published four brochures, (1) Do I Need A Will, (2) Sound Steps In Buying A Home, (3) So You're Going To Be A Witness, and (4) You And Your Lawyer. These can be obtained free of charge from the bar association office in New Orleans. Every lawyer in your locality should have a supply of these pamphlets in his waiting room.

If you will use these, many other topics will be processed and made available.

(h) Every school in the state will be happy to have your local bar association present a "public speaker's award" or a "freedom essay award."

(i) The local bar should hold well publicized "legal institutes" on any new or current field of law. These institutes benefit the lawyer but more than this, they call the public's attention to our profession's alertness to new problems and our desire to be prepared to render good service.

There are many other things your program can include and unlimited material on the subject is available to you if you will have your public relations committee chairman contact the public relations committee chairman of your state association.

But we've slipped the buggy ahead of the horse. The individual lawyer must first realize the need for a public relations program — and the value of good public relations. We must then realize that calling attention to our profession might reveal some things of which we are not proud. We must be prepared to handle all grievances and reprehensible conduct of lawyers promptly and efficiently.

There are many more things a local bar can do. In fact, it is

only limited by its manpower and the understanding of its members.

The old country doctor did not need a public relations program because he rode his rounds and everybody saw him tending to suffering humanity.

The lawyer of fifty years ago did not need a public relations program because the courthouse was the urban and rural community center and political campaigns featured lawyers as speakers. Today, the lawyer is meeting keen competition by other educated groups in the field of oratory and politics — in fact, television with its lighting and sound effects will probably make even this symbol of leadership nonexistent. Today, the lawyer works in his offices most of the time: when he does go to court, the public is not there.

In conclusion, let me say that we must develop an effective public relations program on the local, state, and national level. We need an association on each level to let the people know we are still here.

The people must be told.

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Public Relations For The Bar

By Horace Renegar, Public Relations Director, Tulane University

An address delivered at the Fifth Louisiana Conference of Local Bar Associations Lafayette, Louisiana, January 27, 1956

It seems to me that in discussing public relations here, we are raising several basic questions. . . . First, what is public relations? . . . Who does public relations? . . . Why should or why shouldn't the bar have a PR program? . . . What are some of the public relations things the bar association could do?

Some of these questions have answers which are self-evident.

Let me try to summarize a few of the answers and in doing so try to adapt them to the bar association's needs.

In answer to the question: What is Public Relations. . . .

Public Relations is simply a planned program of action to increase public understanding and build public confidence.

This is an important factor in the successful conduct of any business or profession because the success of any institution or association, public or private, rests on public understanding and public confidence.

Public understanding is based on the dissemination to the public of prompt, thoughtful, adequate and truthful information.

Public confidence is measured by the way an institution or association formulates its policies and conducts its affairs in the light of those policies.

Good public relations, therefore, is basically a combination of good conduct and an honest portrayal of it.

Secondly, who does public relations?

Public relations is not just a job for professionals. It should be a way of life for all who are associated with an institution or association. To plan and execute a good public relations program, however, professional practitioners of public relations, working with an institution or association, should play a major role since otherwise, public relations may well be nobody's business.

And now — let me hasten to suggest some of the things the bar association, for example, may do about public relations:

1. Public Service Advertising. In some sections of the country, very successful *public relations* or *public service* advertising programs concerning lawyers and their services are being utilized. These programs are more often sponsored by banks and trust companies since they fit nicely into their own needs for institutional and public service advertising. For example, advertising may be related to the importance of making *wills* and how one *proceeds* to use the services of lawyers in this; to consult a lawyer when you have a legal problem; don't commit yourself until you talk with your attorney — in case of accident, contract making, organizing or reorganizing a business; on questions related to taxes; real estate titles; estate planning; patents, trademarks, mortgages, leases and many other items.

2. Provide several basic but interesting articles a year for local-type publications. These can deal with the history of the legal profession in Louisiana, its distinguished members; the part lawyers play in the life and progress of the community and state; how lawyers serve society; how lawyers protect the citizen through the work of important bar committees, et al.

These if well prepared with illustrations would be well received by the daily and weekly press; and numerous trade and business journals, chamber of commerce publications, etc.

3. Public service leaflets and pamphlets. Prepared by the bar association for reprint use by the members of the bar or through other means. Pamphlets that treat such subjects as: What you should know about your will; home purchasing; jury duty; the rights of the citizen if arrested; the role of the family lawyer, etc.

4. Television programs. The bar association could present a series of programs of the type which will interestingly interpret the role of the lawyer as attorney, counselor, and barrister. (Similar to some of the medical programs.) Human problems and the processes of the law can be told factually or dramatically or as a combination.

5. Professional forums. At lay level, similar to medical forums, at which the lay public has an opportunity to gain knowledge of the court system.

6. Internal publication. A news letter keeping the members of the bar advised on matters of current interest and of public

relations activities; emphases and ways in which they may participate effectively should be considered.

7. A Public Relations Handbook, spelled out at the local and state level, should be prepared, and a program of implementation should be formulated.

8. Consideration should be given to the initiation of a school program so that youngsters of high school age may be acquainted with the philosophy, history and procedures inherent in our legal system. Perhaps the bar and the schools should work out a program similar to that which industry and education have established, through which teachers one day a year visit industry, and in turn, industrial people on another day each year visit the schools. A speakers' bureau of the bar would probably be needed as a complementary component of such a plan.

There are many ways of improving the public understanding and appreciation of the lawyer and of the bar as a professional body. Too many people think of lawyers as shysters or as sharp men who take advantage of their clients. More people need more information about the basic principles and need to see more evidence of a desire on the part of the bar to inform people as a public service.

These points are directed to what may well be called a "preventive" public relations program for the bar. To use another medical analogy, I might say there is a "curative" side to be considered also. This is the cleansing program which the bar must exercise with vigilance. This respect of the bar will be compounded to a large degree by the rigidity with which the bar associations enforce professional standards of ethics. If communities are to see and know of practitioners who violate obvious professional rules without penalty, their respect for the profession as a whole is undermined. When laymen observe instances of where courts convict lawyers without interruption to their practice, one can understand the confusion of the public to say the least.

Thus for good public relations, the bar must do the right thing and let people know about it. That sounds as though it would be a simple formula. It is not. It is as complex as human society. But while no one must expect miracles from public relations, I am confident that the need for such a program is great and that the results will be tangible and good.

Public Relations For Lawyers

By William H. Bronson, of the Shreveport Times,
Shreveport, Louisiana

An address delivered at the Fifth Louisiana Conference of Local Bar Associations
Lafayette, Louisiana, January 27, 1956

In dividing the material to be presented by the members of the panel, I have been assigned the field of covering the public relations activities of professional groups other than lawyers. Because of limited time the public relations activities of only two such professional groups will be reviewed. Again because of time limitations these activities will have to be outlined in barest detail.

DOCTORS

In recent years no professional group has been as aware of or has done as much about its public relations problems as the medical profession. Surely this accelerated activity grew out of the broadside attack on the profession, its purposes and ideals embraced in the movement for socialized medicine in this country. Most people who think in terms of public relations feel that the movement for socialized medicine was able to grow to the alarming proportions that it grew in this country because it was being cultivated in the fertile field of the doctors' poor public relations.

I shall not attempt to describe here what the American Medical Association did to meet that immediate problem other than to point out that they hired a nationally known public relations firm and won a very expensive fight against government health insurance.

More important to us is an understanding of what the American Medical Association is now doing on a day by day basis in the field of public relations. From this program we may be able to learn something of value for our own profession.

The American Medical Association supplies to each of the county (or in our state—parish) medical societies a Public Relations Manual. This well presented document, prepared by the Department of Public Relations of the AMA, containing 112

pages, is designed to stimulate a well conceived public relations program on the local level by showing what should be done and how to do it.

To start with, the manual explains what public relations is and what it is not in these words:

> "A lot of people figure public relations is just a device to cover up shortcomings. Othres think of public relations as publicity. Both conceptions are wrong. Public relations is a way of thinking translated into action. A better term might be 'public service.' From a medical standpoint, public relations means rendering good medical service twenty-four hours a day, 365 days a year. *Public relations means doing the right thing — and then letting folks know you are doing it.*"

This quotations from the manual emphasizes the real point of public relations. First of all the doctors individually and collectively must do a good job in their field and then the public must be informed of what they are doing.

A friend of mine in the public relations field, who has done work for the architects, emphasizes this point with this language:

> "In any business field, whether involving a corporation or a doctor or lawyer, one of the hardest points to drive home is that a well rounded Public Relations program involves correcting evils which exist within that particular field just as much as it involves influencing the public to believe good things about it.
>
> "In other words, you can whitewash a manure pile, but it will still smell!"

The AMA Manual sets out "a basic minimum public relations program" for parish or county societies consisting of the following eight areas of action:

"1. Provision of emergency medical care on a round-the-clock basis.
"2. Establishment of a mediation committee to hear patients' complaints.
"3. Development of good working relations with press, radio and TV people.
"4. Maintenance of an active speakers bureau supplemented with other health educational activities.
"5. Organization and promotion of a plan to provide medical services to all who cannot pay for them.
"6. Indoctrination programs for new society members.
"7. Initiation of public service projects.
"8. Participation in citizenship activities."

Each one of these points of action is developed in a separate section of the manual.

So much life has been breathed into the AMA - PR program that results can be seen on the local levels throughout the country. Time will permit but one illustration of this local level activity. For each of the past two years the Caddo Parish Medical Association has conducted a public medical forum. The association secured the co-sponsorship of one of the local newspapers and after a considerable publicity buildup the forum was staged one night a week for six weeks the first year and one night a week for four weeks the second year in a public auditorium. From four to six doctors participatde in each forum and fields of general interest were covered; such as heart, diet, and medical fees. Questions from the floor were answered as well as questions sent in in writing during the preceding publicity buildup. The forums were well attended and additional thousands kept up with them in the full newspaper coverage.

ARCHITECTS

The American Institute of Architects launched its first nationwide public relations program on January 1, 1953. The stated purpose of this program is to bring "about a better understanding between the profession and its many publics." After making an extensive study of the question "What is public relations?", the AIA came up with this condensed seven word definition: "Doing good and taking credit for it."

The AIA puts out a chapter manual in which considerable space is devoted to instructions and suggestions on public relations. In addition it supplies a public relations manual detailing a minimum program of public relations for the AIA chapters.

Though the AIA's program, in my opinion, is heavily weighted on the side of publicity, it, nevertheless, sharply points up the essence of public relations in its seven word definition of public relations.

One illustration of its activity on a local level was recently given by the North Louisiana Chapter of the AIA when it put on a concerted effort in the north Louisiana area of selling architects to the public. They felt that their functions were misunderstood, that the public generally conceived that architects did little more than make blue prints, and had no concept of their real function. Employing a public relations counselor, they prepared

a series of ten well conceived advertisements which ran in the Shreveport newspapers, explaining the functions and services of architects to the public. This is perhaps the most pointed effort ever undertaken in that area of the state by any professional organization. The results, though intangible, are thought by many of the members of the North Louisiana Chapter of the AIA to have been highly beneficial to the profession.

To keep the membership continuously prodded on the importance of public relations, the AIA puts out a four page news letter concerned in many instances with public relations matters.

As does the American Medical Association, the AIA recommends that their local chapters maintain speakers bureaus, and that the individual members actively participate in civic undertakings.

THE LAWYER'S PROFESSIONAL INCOME

For some years now many lawyers have felt that lawyers' incomes generally have not kept pace with the expanding economy that we have witnessed since the last World War. I myself feel that the lawyers' professional income — comparatively — has fallen behind in the increasing trends of earned incomes generally.

Good public relations is directly tied into the profession's income. It goes without saying that if the public has a high regard for the profession, understands the services a lawyer renders, and understands what goes into those services — then these services will receive better compensation.

To make one illustration of the lawyers comparative position with other income earners, I have computed the earnings for twenty years of a boy who leaves high school and enters the printing pressman's trade. He goes into the trade as an apprentice and is paid while he learns. Based on the wage rates and hours worked in a Shreveport newspaper plant in 1955 and assuming that those rates and hours remained constant for twenty years — and that taxes remain at the same rate for the twenty years, the pressman would have earned $108,548.00 net after income taxes.[1]

By way of comparison if we compute the income of another young man who, upon finishing high school, takes four years of

1. The assumption is made that the pressman married at the end of four years after entering the trade.

liberal arts work and three years of law, and if we assume that he makes $4,000.00 his first year of practice and that his professional income increases at the rate of $1,000.00 per year each year thereafter so that in his thirteenth year he makes $16,000.00, we will find that at the end of twenty years after leaving high school he will have earned $104,336.00 net after income taxes.[2]

Here we have the young lawyer at or approaching forty years of age and still having received less compensation for his efforts than the young man who went into the printing pressman's trade. $108,548.00 for the pressman compared with $104,336.00 for the lawyer.

Further than this the comparison does not take into account the fact that the lawyer has invested actual out of pocket expenses for his education which must be recouped for a proper comparison. Nor do the figures take into account other amounts piad for the benefit of the pressman such as hospitalization insurance and sums for eventual retirement.

I know that the figures for the pressman are realistic and reflect the actual operating experience in Shreveport in 1955. I suspect that the assumed income for the young lawyer in Shreveport may be high. There are no data for an actual check available.

Does all of this lead to the conclusion that a bright young man upon leaving high school should enter the printing pressman's trade rather than pursuing a legal education?

NO, IT DOES NOT — but it does suggest to me that there is an increasing need from the standpoint of the profession's own future security that it do a better job of selling itself to the public. Perhaps the legal profession would do well to follow the advice contained in the architects' definition of public relations:

DO GOOD AND TAKE CREDIT FOR IT.

---

2. The assumption is made that he marries upon graduating from law school.

The Lawyer And Public Relations

By Ashton Phelps, New Orleans, Louisiana

An address delivered at the Fifth Louisiana Conference of Local Bar Associations Lafayette, Louisiana, January 27, 1956

It is my purpose, as the first of six speakers, to introduce the subject of public relations as applied to lawyers, to discuss with you the question of what constitutes public relations, of the need for it, and why it is important, and the area of its application to lawyers individually and collectively. Specific suggestions will come from my colleagues.

Lawyer public relations has been defined as "appreciation by the public of good performance by the Bar." I don't really suppose that I need to stress the necessity for seeing that the public has a full consciousness of the need for lawyers and a respect for their position in the community. We are all conscious of the importance of educating the public, but I am afraid that we don't do very much about it.

Some of you may be shocked to know the low esteem in which lawyers are generally held by members of the community at large. Numerous public opinion polls taken in recent years show that lawyers rank well below teachers, clergymen, public office holders and merchants, to name a few. This is, to me, quite astounding since all of us know that lawyers have, in fact, been leaders in every phase of the public life of our community and our nation and, considering the contact that the legal profession has with the public at large, both professionally and in the line of civic duty, it is a little short of astounding that we have made such poor use of our opportunities. I am reminded of the story that the late Judge Westerfield used to tell in his class at Tulane on Legal Ethics, which many of you will remember. It seems that the Pope determined one day that a patron saint should be named for lawyers, the need, in his opinion, being great and none having been previously named. Consequently, in conclave assembled in the midst of a great cathedral with statues of all of the saints around the walls, one of the most venerable of the Archbishops was blindfolded, spun around and directed to walk blindfolded until he came into contact with one of these various

statues. After some groping back and forth, this dignitary finally came to the statue of the Archangel Michael throwing the Devil out of heaven and grabbed the Devil. Actually, as Judge Westerfield always hastened to point out, that selection was not binding and ultimately the patron saint selected for lawyers was St. Ives who, at last report, was the only lawyer who had ever been made a saint. On his grave is the inscription "He was a lawyer but not a knave and the people were astounded."

Many of us tend to think that the relatively low esteem in which the Bar is held is something of recent origin. That is not true. In point of fact, we are reminded of Shakespeare's suggestion "First thing we'll do is let's kill all the lawyers" and, of course, in New Testament there are the words of Jesus, "Woe unto ye lawyers, hypocrites."

Is all this criticism justifiable? Is the apple really as rotten as some of these reports indicate? Of course, a good public relations man can make even a bad apple look tasty, but is a whole lot easier to make appetizing a good apple. I believe that the Bar is a good apple and that our real failure has been in not properly presenting to the public its true appearance.

In short, our first job is to "be good" and our next job is to "look good." It is possible to look good for a short time without being good but such a course is only temporary and, in my opinion, is doing it the hard way.

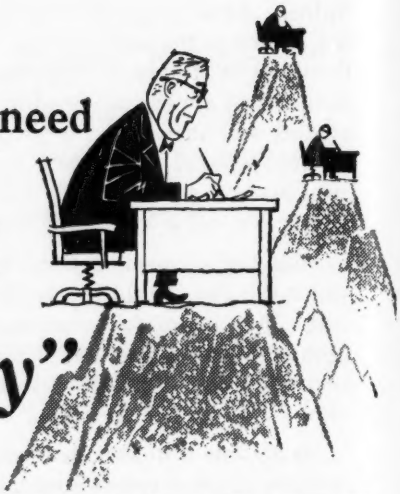
One more word of introduction before concluding. The job of public relations is both individual and collective. Each of us has a direct interest in presenting himself to the public in as favorable a light as possible. This involves such matters as professional bearing and conduct, efficiency, office appearance, dispatch with which matters are handled, fair and detailed statements for professional services, and the like. Each of us also has a direct interest in the stature of the lawyer collectively. This, in turn, involves such matters as the fair and prompt settlement of legal disputes in general, the reasonable handling of juries, the maintaining of a high standard of ethics among the profession generally, and the like.

By and large, I feel we have fair and efficient courts, a high standard of ethics among the profession and excellent law schools. In short, I think we "are good." The basic problem is for us to "look good." That, in my opinion, should be the principal area of our discussion today. I thank you.

What we lawyers need

is a little

"Inspired Mutuality"



A prominent editor the other day called for "inspired anxiety" to cope with problems in human relations. Well, lawyers have problems, too—with each other, with the public, with the concept of Law.

What are you doing about them? What can you do . . . alone?

No lawyer can practice unto himself . . .

No local bar can function alone . . .

No state bar can . . .

What our profession needs is mutuality . . . Look at the table

	Total Potential	% in National Organization	Sr. Dues	Dues Income (millions)	Total Income (millions)
Doctors	180,000	83	$25	$3.5	$9.0
Dentists	84,000	86	20	1.4	2.1
Accountants	50,000	50	40	1.0	1.3
Osteopaths	12,371	72	75	.525	.79
Lawyers	220,000	24	16	.606	.666

How can we hope—either as individuals or as a profession—to attain our full stature unless we help each other attain it?

To be strong we must serve. Theodore Roosevelt said: "Every man owes some of his time to the upbuilding of his profession."

How can we lawyers fully serve?

How *else* than by infusing our personalities and our intellects, our experience, our judgments and our voices in the American organized bar . . .

We need each other . . . We need an 'inspired mutuality' of our professional selves.

American Bar Association • American Bar Center • Chicago 37, Illinois

Interim Report of The Public Relations Committee Junior Bar Section Louisiana State Bar Association

The Public Relations Committee of the Junion Bar Section, Louisiana State Bar Association, is composed of Paul C. Tate, Mamou, Chairman, Lawrence E. Donohoe, New Orleans, Ben C. Bennett, Jr., Marksville, Luther F. Cole, Baton Rouge, Judge Albert Tate, Jr., Ville Platte, Chas. Y. Wier, United States Air Force.

The Committee held its first formal meeting in August of 1955 at the home of Ben C. Bennett, Jr., Marksville, Louisiana, at which meeting all members attended at their own expense.

The Committee had previously selected as its principal project for the year 1955, the writing of at least twelve pamphlets on various topics to be distributed by the Public Relations Committee of the Louisiana Bankers' Association. The Louisiana Bankers' Association approved twenty-five topics and, of these twenty-five topics, sixteen topics have been assigned to date.

To date, January 26, 1956, the following pamphlets have been written by members of the Committee and members of the Junior Bar, have been edited by the Editing Committee, submitted to the Advisory Committee composed of the three Louisiana law school faculties, and approved for publication:

1. The Louisiana Court System
2. Donations
3. Forced Heirship in Louisiana
4. Oil and Gas Law
5. Promissory Notes
6. Bankruptcy
7. Homestead Exemptions

The following members of the Committee and of the Louisiana Junior Bar Section have contributed articles and outlines:

1. Dr. George W. Pugh
2. William F. Pipes, Jr.

3. Judge Albert Tate, Jr.
4. R. J. Vidrine
5. Luther F. Cole
6. Lawrence E. Donohoe
7. Chas. Y. Wier
8. Donald J. Tate

Your Chairman and Bascom D. Talley, Jr., Esquire, of Bogalusa, Chairman of the Public Relations Committee of the Louisiana State Bar Association met in New Orleans on January 20, with the Public Relations Committee of the Louisiana Bankers' Association where the pamphlets were approved in principle by the Public Relations Committee of the Bankers' group and it was decided that the prepared pamphlets would be submitted to the Bankers' group in printed or multigraphed form for the approval of the pamphlets as to contents prior to publication.

The Public Relations Committee of the Junior Bar Section is now making a study of the entire Public Relations problem to determine the greatest pressing needs of the Bar from a standpoint of "remedial" Public Relations, that is, seeking to correct some inadequacies of the Bar which inadequacies, when corrected, will no longer hamper the standing of attorneys and the legal profession. The problems of legal aid in criminal and civil matters will be studied and some suggestion will perhaps be made concerning the possibilities of obtaining legislation for the financing of a realistic legal aid program in the State of Louisiana. It will be noted that the medical profession has sought and received legislative help in the form of charity hospitals and welfare payments for recipients of services by indigent individuals.

Your Committee has been gathering material from other states, from the American Bar Association, and from other localities which material can be made available to any local group seeking to set up an effective public relations program.

Mamou, Louisiana, this 26th day of January, 1956.

PAUL C. TATE

Minutes of The Meeting of The Section Of Local Bar Organizations

The annual luncheon meeting of the Section of Local Bar Organizations was held in the Sun Room of the Buena Vista Hotel in Biloxi, Mississippi, at 12:30 P. M. on May 3, 1955. Mr. Ashton L. Stewart, Chairman, of Baton Rouge presided, and after a call to order and invocation, a discussion was had concerning the midwinter meeting held in Shreveport, Louisiana, in January, with Mr. John T. Guyton giving a brief report on the meeting.

The Chairman then called upon various representatives of Local Bar Associations to give a report of their particular activities, as a result of which the following persons were called upon and gave reports which are hereafter briefly outlined.

1

Mr. George J. Ginsberg, President of Alexandria Bar Association, stated that they had conducted exercises in connection with the induction of District Judges, that they had conducted memorial services for deceased members of the Bar. He stated that the Alexandria Bar had an active Public Relations Committee and that they have an active Committee on Grievances and Ethics. They have sponsored a program for the making and hanging of pictures of past District Judges in the District Court Room. The Alexandria Bar Association has worked with the local Alexandria banks on a program approved by the American Bar Association which consists of a display of pictures of past Presidents of the United States, and this display was put on at various schools. He stated that no regular meetings were held but that specially called meetings were well attended, the last such meeting having had an attendance of 80% of the membership.

2

Mr. Jacob S. Landry, the newly installed President of the New Iberia Bar Association, stated that, under the leadership of Mr. Lawrence P. Simon, they had launched a Public Relations Campaign. He stated that their Bar Association was an active organization, with 24 members out of 25 practicing lawyers, and the other of whom will shortly join the Association. The Bar Association has recently completed a revised Fee Bill. They have

revised the Court Calendar Schedule in cooperation with the District Judges. They have instituted a radio program and the distribution of pamphlets in connection with their Public Relations Campaign. They have quarterly meetings, alternate business and social meetings. They plan to have a 16th Judicial District Bar Forum.

3

Mr. H. H. Richardson, President of the Bogalusa Bar Association, stated that their Association was very active and there was a good turnout to meetings. Mr. Richardson feels that they are lacking in a program to work with and hopes that this may be remedied. He stated that, in his opinion, one of the difficulties in connection with public relations was the action of the Bar members themselves within the Bar with respect to the criticism of other lawyers and judges. He suggested that a program within the law schools of the State to develop an early interest in Bar Associaitons and activities would be helpful. He suggested that members of the Bar be encouraged to take keen interest in local civic organizations, such as Rotary, and that every effort should be made within the Bar Associations to get lawyers to uphold their end of local civic responsibilities.

4

Mr. J. Norwell Harper, representing the Southwest Louisiana Bar Association, stated that their activities had been somewhat curtailed but they were now undertaking a more progressive program. He stated that they now were having one called meeting a month, whereas, they formerly had one meeting a year. He stated that one of their problems lies in the fact that the 14th Judicial District has been redistricted and, also, that the Southwest Louisiana Bar Association has lost all of their Jennings' members as they now have their own local association. The Southwest Louisiana Bar Association is now redrafting their setup, as some lawyers in new districts may desire to continue in the Southwest Louisiana Association.

5

Mr. C. H. Dameron of Port Allen, representing the 18th Judicial District Bar Association (Iberville, Pointe Coupee and West Baton Rouge Parishes), stated that they had 25 members of the 30 practicing lawyers in their district. He stated that the Bar Association's activities were primarily social but that they have adopted a fee schedule. He stated that they did need an-

other District Judge, and that the Bar Association had taken the initiative to get another Judge in their district.

6

Mr. L. C. Parker, President of the Baton Rouge Bar Association, stated that they had 245 members out of 300 practicing lawyers. He stated that their minimum fee schedule is followed closely by a large percentage of their members. He also stated that the Association had worked for an additional Judge in the 19th Judicial District and for a Family Court in which they were successful. He stated that the Bar Association meets once a month and also had an annual picnic, that the Assocation had 18 committes, among which are Committe on by-laws, the Clerk of Court Committee, the Entertainment Committe and the Federal Court Committee, to name a few. He said that the Association had been active in its efforts to secure a third Judge for the Eastern District of Louisiana. At the conclusion of Mr. Parker's remarks, Mr. Pat Wilson of the Baton Rouge Bar called attention to one other feature of the Baton Rouge program which consisted of a series of meetings that had been instituted by Mr. Dick Cadwallader for the purpose of discussing legal ethics. These meetings have been held every Monday morning for sometime and are continuing and are found to be of considerable interest.

7

Mr. Ben N. Tucker of Hammond, President of the 21st Judicial District Bar, stated that their Bar Association had been functioning for 5 years. They meet once a month, and once each quarter they have a social gatherings. He stated that the mileage between various towns made attendance difficult since Denham Springs, one of the towns in the District, was some 50 miles from Amite. He stated that their Bar Association had conducted services for induction of the District Judge and the City Judges. He stated that they have 7 committees. He believes that radio programs would serve little purpose, as most people in his area now watch TV. He stated that his association is mindful that they are a long way behind in apprising the public of the position of lawyers in presnt society.

8

Mr. Thomas M. Hayes, Jr., of the Monroe Bar, stated that they had worked for the air conditioning of the Record Room which had been accomplished, and that they had worked with

the District Judges in rewriting the Court Rules. He stated that their committee on Ethics was very active, as they had persuaded one of the local banks to change certain objectionable advertising, that they had prevailed upon the local press to cease naming attorneys engaged in litigation. They have rewritten their By-laws and have rewritten their Fee Schedule. He stated that about 60% of their Association turns out for monthly meetings. They have a long range schedule of programs and meetings.

9

Mr. William M. Shaw of Homer stated that all Claiborne Parish Bar Association's practicing attorneys (12 in number) were members of their Bar Association. They have only one committee with is Entertainment Committee. They have had a minimum fee schedule for many years but on account of conflicts with adjoining parishes in matter of fees, he suggested that someone edit and publish all minimum fee schedules adopted by Local Bar Associations in the State.

10

Mr. James G. Schilling, President elect of the New Orleans Bar Association, stated that it was his belief that if the lawyers would nurture strong Local Bar Associations the other Bar Association problems on higher levels would be easily taken care of. He stated as an example of the work which a Local Bar Association could do that the New Orleans Bar Association discovered that in plans to move the Supreme Court to a new building, the law library would thus be moved to the new Civic Center and no one had considered the problem thus created as far as the local courts were concerned. The Bar Association determined that there was about $500,000 of unappropriated funds originally for repair of the old Civil Courts Building. With the use of that fund and other funds, it was found that they can now build a new building next to the new Supreme Court Building to house the local Courts. Mr. Schilling stated that they have found that dinner meetings get better attendance than luncheon meetings and, therefore, their meetings are generally held as dinner meetings. He stated that they have a speaker's bureau to address schools and civic associations, that the Bar Association participates in civic functions and sponsors ceremonies in connection with all Court activities and is striving to get better coordination between Courts and lawyers. They attempt to get the younger lawyers to understand the Court's responsibility to law-

yers, as well as the lawyers' responsibility to the Courts. He stated that their work in Public Relations had been greatly helped by Mr. Cadwallader's work who keeps Local Bar Associations informed as available program for Public Relations work. Mr. Schilling also stated that lawyers should be made more aware of the fact that they can get advisory opinions from their local committees on Ethics and Grievances.

Following reports by the representatives of the various Local Bar Associations, Mr. Ben R. Miller of the Baton Rouge Bar gave a brief review of the publications which would be of assistance to Local Bar Associations in their work. He mentioned the Public Relations Manual and the publication on unauthorized practice of law as issued by the American Bar Association. He also mentioned the Coordinator Magazine published by the American Bar Association. He suggested that the help of the American Bar Association be enlisted in connection with the adoption of minimum fee bills. Mr. Miller stated that, as a member of the House of Delegates of the American Bar Association, he would always appreciate views of the Louisiana lawyers with regard to any matters coming up for consideration or any matters which any lawyer thought should be taken up by the American Bar Association.

Mr. Asthon L. Stewart was nominated as the Chairman for the Section for the coming year. Mr. Lawrence P. Simon was nominated as Vice Chairman, and Mr. John T. Guyton was nominated as Secretary, all of whom were unanimously elected.

The motion was made, duly seconded and adopted, that the Section approve the resolution before the convention to increase the State Bar Association dues. There being no further business, the meeting was adjourned.

JOHN T. GUYTON
Secretary

Lectures By Tulane Program Of Professional Study

The Tulane Program of Professional Study announces a series of lectures on "Law and Morals in the 20th Century" to be given April 3, 5 and 12, 1956. The lectures will be given at 7:30 p. m. and 8:45 p. m. on these dates.

The speakers will be Eric H. W. Voegelin, Boyd Professor of Government at Louisiana State University; Harold N. Lee, Professor of Philosophy, Newcomb College; Mitchell Franklin, W. R. Irby Professor of Law, Tulane University; James K. Feibleman, Graduate professor in the department of Philosophy, Tulane University; and Brendan F. Brown, Professor of Law, Loyola University.

The University announces that it would appreciate registration in advance but wishes to emphasize that there would be no charge for attendance at these lectures.

Further inquiry can be directed to the Program of Professional Study, Tulane University School of Law, New Orlenas 18, La.

Red China, The Tokyo Trial, And Aggressive War

An address delivered by Dr. Brendan F. Brown
of Loyola University School of Law
at the annual meeting of the Louisiana State Bar Association
Biloxi, Mississippi, May 3, 1595

I am deeply grateful for this opportunity to discuss a question of vital importance to contemporary international law and the cause of world peace. I thank Mr. Yancey, Chairman of this Section, for the invitation which he extended to me on your behalf to participate in this program. My purpose will be to discuss the psychological implications of the strange contradiction which resulted from the fact that although the leaders of Japan were punished by certain nations for the crime of aggressive war and conspiracy to wage it, nevertheless the leaders of Red China, which was condemned shortly afterwards for aggression in Korea by the United Nations, were treated as friends by many of these same nations. This weird and contradictory behavior may be diagnosed as juridical schizophrenia or split national personality, and basically ascribed to a misconception of the nature of international law and aggressive war.

I.

The Leaders of Japan were punished for the Crime of Aggressive War and Conspiracy to Wage it.

At the historic Tokyo trial of Tojo and his associates, eleven nations tried, convicted, and punished Japanese leaders for the crime of aggressive war and conspiracy to wage it. On February 15, 1946, General Douglas MacArthur, then Supreme Commander for the Allied Powers in the Pacific, appointed nine judges of the International Military Tribunal for the Far East, all nominees of their respective countries. It is important to recall the names of these countries because some of them will be the subjects of the following psychological study of national behavior. They were Australia, Canada, China, Great Britain, Netherlands, New Zealand, Soviet Union, United States of America, and France.[1] These nine nations had signed the

1. Keenan and Brown, *Crimes against International Law* (1950) 28, 39, and 198 (note 32).

Japanese Instrument of Surrender in Tokyo Bay on September 2, 1945. The original charter of the Tribunal was amended by General MacArthur on April 26, 1946, and he thereafter appointed two additional judges, one from India, and the other from the Philippines. These two latter nations had not signed the Instrument of Surrender.[2]

Twenty-eight Japanese leaders were indicted as the major Oriental war criminals. They were leaders, "who, either as Prime Ministers, or High Cabinet officials, or as heads of the Army or Navy, ruled Japan, through a period of approximately fifteen years."[3] They were indicted "as common felons, not merely as political offenders."[4] These defendants "were put on trial for the havoc, ruin, and loss of life, brought about in one way or another in consequence of the immense power once exercised in the domestic society which they ruled."[5]

The authority to hold the leaders of nations liable for their public acts and to try and punish them as individuals for such acts, if found criminal under international law, was contained in the preamble of Article 5 of the Charter. It provided that:

> "The Tribunal shall have the power to try and punish Far Eastern war criminals who as individuals or as members of organizations are charged with offenses which include Crimes against Peace. The following acts, or any of them, are crimes coming within the jurisdiction of the Tribunal for which there shall be individual responsibility."

The defendants were tried before the International Military Thibunal for the Far East. This Tribunal was authorized by a proclamation of General MacArthur on January 19, 1946.[6] It began to exercise jurisdiction on April 29 of that same year.[7]

The law applicable to these defendants covered the crime of aggressive war and conspiracy to wage it. This law was also embodied in Article 5 of the Charter which conferred jurisdiction over both person and offenses. Section a of Article 5 described crimes against peace as "the planning, preparation, initiation or waging of a declared or undeclared war of aggression, or a war in violation of international law, treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing."

2. *Idem* 28.
3. *Idem* 3.
4. *Ibidem.*
5. *Ibidem.*
6. *Idem* 1.
7. *Idem* 2.

The relevant law of the case also related to conventional war crimes. These were violations of the laws or customs of war. It also covered crimes against humanity, such as the extermination, or enslavement, and the like, of groups of persons resulting from "policy decisions made on the highest plane of civil or military authority."[8] But this paper is concerned only with those aspects of the Tokyo trial which relate to aggressive war and conspiracy to plan or initiate it.

The closing arguments and summations ended on April 16, 1948. The International Military Tribunal for the Far East delivered its judgment on the fourth, through the twelfth, of November, 1948.[9] The Supreme Court of the United States decided, on December 6, 1948, that it would later hear arguments on motions of the defendants for leave to file petitions for writs of *habeas corpus*.[10] On December 16 and 17, 1948, these arguments were presented, but "the Supreme Court denied the motions on the ground that the International Military Tribunal for the Far East was not a Tribunal of the United States."[11]

Accordingly, the sentences as pronounced by this Tribunal "were carried out on December 23, 1948, in accordance with the Order of the Supreme Commander for the Allied Powers."[12] The death sentence was meted out to seven of the defendants, life imprisonment to sixteen, imprisonment for twenty years to one, and seven years to another, or a total of twenty-five. Of the remaining three defendants, two had died and one had gone insane.[13]

II.

Shortly after the Tokyo Trial, the United Nations condemned Red China for Aggression in Korea.

On June 25, 1950, Communist North Korea committed an act of aggression against the Republic of Korea by an attack across the thirty-eighth parallel. North Korea was a puppet government which had been established in May, 1948, by Soviet Russia after refusing to permit a commission representing the United Nations to supervise free elections. Such elections were held in South Korea, however, under the supervision of the

8. *Idem* 117.
9. *Idem* 2, 3.
10. *Idem* 3.
11. *Ibidem.*
12. *Ibidem.*
13. *Idem* 189, 190 (notes 23, 24).

United Nations, with resulting esablishment of the Republic of Korea, in August, 1948.

On October 25, 1950, Red China joined in the aggression by crossing the Yalu river from Manchuria as a consequence of a *prima facie* conspiracy with North Korea and Soviet Russia. This aggression occurred despite the recommendation of the Security Council of the United Nations, made on June 27, 1950, "that the members of the United Nations furnish such assistance to the Republic of Korea as may be necessary to repel the armed attack and to restore international peace and security in the area."[14] This recommendation was made on appeal from the Republic of Korea to the United Nations for aid. The Soviet Union was not present.

The General Assembly on February 1, 1951, in a resolution, condemned Red China as an aggressor in Korea. It noted that the Security Council had failed to exercise its primary responsibility for the maintenance of international peace and security in regard to Chinese intervention in Korea. The General Assembly found "that the Central People's Government of the People's Republic of China, by giving direct aid and assistance to those who were already committing aggression in Korea and by engaging in hostilities against the United Nations forces there has itself engaged in aggression in Korea."[15] Thus the United Nations rejected the fiction that the only Chinese Communist forces in Korea were those of the Chinese People's Volunteers.

There was evidence of a common plan or conspiracy to commit aggression by North Korea, Red China and Soviet Russia. Soviet agents had infiltrated China from the rear while the Chinese were fighting the armies of Japan. After the defeat of Japan, these agents provoked strikes, created turmoil, and endeavored to sabotage the lawful government of China. This government had no control over units of the Communist Army in China which were under the authority and direction of an overall Red Army command. These units were later augmented and supplied with armament which had been captured from the de-

14. Resolution (S/1511) adopted by the Security Council on June 27, 1950. See *Yearbook of the United Nations*, 1950, pp. 223, 224.

15. Resolution (498 (V)), paragraph 1, adopted by the Assembly on February 1, 1951. See *Yearbook of the United Nations*, 1951, p. 225.

16. See Price, Congressman Melvin, Extension of Remarks, *Communism's Route to America Lies through China*, by Madam Chiang Kai-shek, 99 Congressional Record (Part 12), 83rd Congress, 1st Ssesion, July 2, 1953, to August 28, 1953, Appendix, at pp. 4912, 4913 (July 31, 1953).

feated Japanese. They contributed greatly to the imposition of Communism upon the people of China.[16]

But the full conspiratorial implications of this situation were not clearly and unmistakably perceived until the aggression in Korea. Russia not only set up the puppet state of North Korea, but also conspired with it and with Red China ot cause the attack upon the Republic of Korea. North Korea had received arms and ammunitions from each of its two fellow conspirators. Neither North Korea nor Red China could have carried on adequate military operations without armament from Russia. On March 2, 1953, the then Soviet Minister, Andrei Y. Vishinsky, in his official capacity as representative of Soviet Russia, in the United Nations Organization, admitted that:

> "The Soviet Union has never concealed the fact that it sold and continues to sell armaments to its ally, China. As is well known, the Soviet Union concluded with China in 1945, even before the Central People's Government of the Chinese People's Republic had come to power, a treaty of friendship and alliance. That treaty was confirmed in 1950 in a new treaty with the new Government of China. It was a treaty of friendship, alliance and mutual assistance, concluded between the U.S.S.R. and the Chinese People's Republic.
>
> In line with these treaties the Soviet Union has sold and continues to sell armaments to China, while China sells to the Soviet Union various types of raw materials, including strategic raw materials; and this is quite natural."[17]

On July 27, 1953, after the armistice in Korea was signed by the United Nations and the Communist delegates, Soviet Premier Georgi M. Malenkov called this truce a "great victory" for the Chinese People's Volunteers and the Korean people.[18]

Further evidence of the Communist conspiracy may be seen in Indo-China. It was not until July 21, 1954, that an armistice was concluded there, terminating a war which had been waged for over seven years. Additional evidence of this conspiracy was disclosed by the statement of Pote Sarasin, Thailand's Ambassador to the United States, made last June, that Red China had established a puppet regime in Yunnan Province, near the border of Thailand, during 1953. This regime was biding its time for

17. See Knowland, Senator William F., *American Foreign Policy and the United Nations*, 99 Congressional Record (Part 2), 83rd Congress, 1st Session, February 26, 1953, to April 8, 1953, at p. 1975 (March 16, 1953).

18. *The World Almanac and Book of Facts for 1954*, published by the New York World Telegram, at p. 114.

the purpose ultimately of obtaining control of Thailand's government.[19]

III.

The Contradictory Behavior of the Nations in Question evidences Symptoms of Juridical Schizophrenia or Split Personality.

Now the aggression of Red China in Korea and Indo-China did not essentially differ from that of Japan in China, and other parts of Asia, but only in degree. Of course, it was not physically possible to indict and try the leaders of Red China and North Korea for the crime of aggressive war, and those of the Soviet Union for the crime of conspiracy to wage such a war. But it was utterly inconsistent for the members of the United Nations, including the ten nations associated with the United States in the Tokyo trial, to refuse to pull their full weight in Korea after that organization had called on its members to aid the Republic of Korea. Contradictory behavior is revealed by the fact that some of these nations carried on trade which was extremely beneficial to the economy of Red China. On the juridical side, some recognized the government of Communist China and are still strenuously striving to seat that government in the United Nations.

In the first place, it is common knowledge how little aid the United States received in Korea. Statistics disclose that forty-three of the sixty members of the United Nations contributed no force whatsoever to implement its decision to repel the aggressors in Korea. The seventeen nations which did support this decision contributed less than 35,000 men, although the United States provided more than 350,000 and the Republic of Korea more than 400,000.[20]

Secondly, even while the fighting was going on in Korea, allied ships were carrying goods to Red China. Many of these ships belonged to Britain[21] which played an important role in the prosecution of the Tokyo case. Shipments to Red China were of great value by contributing to the soundness of its economy. Its morale was bolstered and its capacity for domestic production of war goods and for the transportation of war was increased.

19. *The World Almanac and Book of Facts for 1955*, published by the New York World Telegram, at p. 108.
20. Knowland, *supra* note 17, at p. 1972.
21. *Idem* 1974.

Any commodity which a nation at war wants to import will aid it in carrying on that war. Harold E. Stassen, director of the Foreign Operations Agency, in May, 1954, reported to Congress that Communist China's trade rose to $695,000,000 in 1953, from $622,300,000 in 1952, and that while the United States continued its total embargo against the Chinese Communists, Britain, France, West Germany and Japan had increased exports to Red China in 1953.[22] This did not take cognizance of the fact that even greater trading was taking place with the Soviet Union and Eastern Europe, and that Russia was free to re-ship to Red China.

Stassen on April 9, 1954, admitted that arms used in Indo-China were made in the Soviet Union, China and Czechoslovakia, but declared that the West, in trading with the Soviet Bloc, expected a net advantage.[23] Although the controls imposed April, 1951, remained in force for Communist China, Hong Kong, Tibet and Macao, yet as of April, 1954, Britain reported relaxation of curbs on the export of rubber to the Soviet Union and the Soviet Bloc Nations.[24] In addition to controls on rubber, which were called ineffective, export licenses were no longer required on other non-strategic materials.[25] But the crucial question was what were such materials.

Last August, an eight member delegation of the British Labor party visited Red China at the invitation of Premier Chou-En-lai. This delegation arrived in Peiping, on August 14, and spent two days in Moscow, meeting Soviet Premier Georgi M. Malenkov. Mr. Attlee and Mr. Bevan were warmly received by Chou-En-lai. On August 22, Secretary Phillips praised the People's Republic of China, and on August 24, Attlee conferred with Mao Tse-tung, Communist China's Chief of State, who asked the British Labor Party to aid in persuading the United States to withdraw its Seventh fleet from the Formosa area, and to terminate its rearming of Japan and Germany. Means for greater trade between Britain and Communist China were discussed.[26]

Thirdly, seventeen members of the United Nations recognized the Communist regime of China and continued such recognition

22. Stassen, Harold E., *New York Times*, Monday, May 17, 1954, page 1, column 6.
23. See *The World Almanac and Book of Facts for 1955*, published by the New York World Telegram, at p. 94.
24. *Idem* 100.
25. *Ibidem.*
26. *Idem* 117.

even while this regime was waging aggressive war upon the United Nations in Korea. These nations were Russia, Czechoslovakia, Poland, Yugaslavia, Burma, Israel, Afghanistan, Norway, United Kingdom, Pakistan, Sweden, India, Denmark, Netherlands, Indonesia, Byelo Russia, and Ukraine.[27] It will be noted that four of the eleven prosecuting nations at the Tokyo trial are included in this group.

Fourthly, many nations are endeavoring to admit Red China to the United Nations. Last June, Prime Minister Churchill and Secretary Eden in their discussions with President Eisenhower and Secretary Dulles insisted that such admission was inevitable.[28]

On May 2, 1954, the prime ministers of India, Ceylon, Pakistan, Burma and Indonesia ended their first Asian Conference in Colombo and Kandy, Ceylon. They concluded that the admission of Communist China to the United Nations would ease world tension and promote stability in Asia.[29] At the opening of the British Labor party's five day convention in Scarborough, England, last September, Attlee called for the delivery of Formosa to Communist China and the admission of the Peiping regime to the United Nations. He said that the United States was not sufficiently realistic in its support of the Chinese Nationalists.[30]

These four examples of behavior on the part of the nations in question when compared with their actions at the Tokyo trial or with their obligations as members of the United Nations, dedicated to uphold the fundamental ideals of that organization, indicates juridical schizophrenia. When their contradictory behavior with regard to aggressive war by Japan and Red China, respectively, is analyzed it is manifest that the integrity of their corporate minds is divided. Yesterday, their policy was to condemn, try, and execute seven Japanese militarists for their aggression in China, among other crimes under international law. But today, their mentality is to treat the leaders of Red China, who perpetrated aggression in Korea, as friends and equals.

The Russian attitude toward the Tokyo trial is now obvious.

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27. Knowland, *supra* note 17, at p. 1974.
28. *The World Almanac and Book of Facts for 1955*, published by the New York World Telegram, at p. 107.
29. *Idem.* 104.
30. *Idem* 119, 120.

The Soviet Union regarded this trial merely as a means for furthering political objectives. International law became a tool to

advance the hegemony of the Communist party. Apparently, from the Russian point of view, the Japanese defendants were guilty of a war of aggression essentially because they had opposed the ideals of the proletarian revolution in China, which Russia was seeking to dominate in competition with Japan.

A condition of fantasy continues to prevail in the organization of the United Nations. Although this organization fought the Chinese Reds, some of its members were allies of Red China and as such supported the aggression in Korea. Communist Russia which has a power of veto is one of these allies. Only its absence made possible action in regard to Korea. The admission of Red China to the United Nations would extend the fantasy. It would be tantamount to placing the arsonist on the city fire department. It would be to admit still another enemy of international law and its implementing institutions to a place of authority.

IV.

A Misconception of International Law and Aggressive War has produced a Psychotic Condition.

But like schizophrenia in the individual, so too in the nation, the victim is not aware of his condition. The nations under discussion are not conscious of an intellectually split personality because of error concerning the true nature of international law and the crime of aggressive war. They perceive no basic inconsistency in their conduct because if, as they apparently believe, all truth is merely relative, then there can always be doubt about the moral values which underlie any system of international law and consequently concerning the nature of an aggressive war. Upon this philosophical premise, it is impossible to know whether the moral values accepted by the free world, or the reverse standards of the Communist slave world, are true, and hence to decide whether an aggressive war is one which is waged to promote the values of the former world, or the latter. If all truth is relative and subjective, then all law, including international law, is in essence power, and aggressive war is whatever those who have the power choose to declare it to be at any particular time.

The nations in question have withdrawn from the juridical reality that international law rests ultimately on moral absolutes, not on relative truth or physical force. This law depends upon extrinsic principles, not simply upon the arbitrary will of nations or agreements reached by them. If nations may create

every part of international law, then they may also abrogate it. This is a power concept of international law, namely, that "physical might is the criterion of moral and legal right, a concept of international law which would in effect render it utterly useless."[31]

International law consists of two elements, an unwritten and a written common law. The society of nations, just as national society, has a common law, conceived as the "law," and also specific enactments, known as "laws." This common law is unwritten in the sense that positive international law derives its validity from a higher law of right and wrong. It is written insofar as it "is the gradual creation of custom, which derives its moral value from the habit or continuity of recognition of the natural law."[32] In addition to this unwritten and written international common law, the "regime of international social control"[33] also embraces "a body of precepts, which exist in the form of treaties, agreements, assurances and the like."[34]

According to this philosophy of international law, the Order of General MacArthur, which promulgated Article 5 of the Charter of the International Military Tribunal for the Far East, did not create the international law applicable to the case. Nor did the intrenational penal law contained in this Charter spring wholly from international positive law, as certain members of the Prosecution purported to demonstrate at the trial. Rather the Tokyo Charter gave legalistic form to international penal law which previously rested on the sanction of reason alone, and ultimately on the immutable dictates of an objective natural law. This Charter added the sanction of physical and political enforcement to that which was already law in the sphere of international society because it carried the duty of obedience. Hence the Tokyo Charter incorporated "customary law and law based on the recognition of international morality by treaties, by a long and distinguished line of juridical experts, by the School of Natural Law Jurisprudence, and by a great part of world public opinion."[35]

A philosophy of international law which postulates a foundation of intrinsic moral ideal, and hence universality, would necessarily require that the administration of that law should always

31. Keenan and Brown, *Crimes against International Law* (1950) 75.
32. *Idem* 73.
33. *Ibidem.*
34. *Idem.* 73.
35. *Idem.* 43.

be in the name and on behalf of world society. This is so even though that society may be represented by particular nations, as in the instance of the eleven nations in the Tokyo trial. But when such representation takes place, there is a special responsibility on the part of such nations to abide by the law which they have administered. According to this legal philosophy, the law of the Tokyo case is equally binding on every nation, regardless of its size or power.

The intellectual integrity of the nations participating in the Tokyo trial could have been maintained only if they had honestly believed that the concept of aggressive war can have but one meaning or content. Unfortunately the Charter of the International Militray Tribunal for the Far East did not define aggressive war in any sense. It did not formulate the essential characteristics of a war in violation of international law, as a matter of law. It only stated that the planing, preparing, initiating, or waging of an aggressive war, or one in violation of international law, treaties, agreements, or assurances, was a crime against peace.[36]

The essence of aggressive war is not to be found in the physical fact as to which nation first resorts to physical force, although this is important as a matter of evidence. It does not arise from the will of men or nations, or pragmatic consequences, or social utility. A war is aggressive when it inflicts gross injustice upon the enemy nation as determined in the light of universal norms of a higher law, and consequently becomes criminal because it violates the right of the community of nations to the enjoyment of peace, order and tranquility. This enjoyment constitutes the most primary and basic interest of world society.

An aggressive or criminally unjust war, resulting in the destructions of life and property, is such because of its assault upon the common good of international society. It is "an activity of one or more politically organized societies, against another such society or societies, overcoming the will of the innocent nation by physical force for the satisfaction of a national interest or interests of the aggressor nation or nations."[37] This activity is "in derogation of an inalienable international law right or rgihts, declared or undeclared by positive law, of the corporate person of the nation against whom the activity is directed,

36. *Idem* 14, 57.
37. *Idem* 58.

and/or the individual persons who form the basis of such corporate person."[38]

Of course, not all wards are criminal. Thus the waging of a just war is a lawful means to protect an inalienable national interest. In the waging of a just war, a nation is permitted to inflict "lawful mass punishment upon the enemy"[39] because it is defending the corporate life of a nation which has forfeited its inalienable right to lfie by its criminal guilt.

Legal history vindicates the conclusion that the concept of aggressive war resulted from the eventual recognition of the fact that certain wars were unjust onslaughts against the international social interest. In the first period of international law, which terminated approximately after the sixteenth century, such writers as Cicero, St. Augustine, Gratian, Thomas Aquinas, and Hostiensis described the difference between a just and an unjust war.[40] Thus Aquinas formulated three requisites for a just war. Hostiensis discussed seven different types of war, four just and three unjust. From the *Decretum* of Gratian, the distinction found tis way into many *Summae.* These were written by medieval canonists as reference books for the benefit of ecclesiastics who heard the confessions of leaders of States, and others responsible for the waging of war.[41]

In the first period of international law, a distinction was drawn between sinless and sinful wars, on the supernatural level, and between just and unjust wars on the basis of scholastic natural law. But no reference was made to the third facet of warfare, namely, the legal or juridical. This was because international society had not become adequately unified in a physical sense so as to be able to visualize the interest which it had in the maintenance of peace. This unification did not begin until the latter part of the nineteenth century, and did not reach an advanced stage until the twentieth.[42] By way of analogy, the concept of criminality in English law did not arise until about the fourteenth century when physical unification resulted in the realization that certain offenses violated the King's Peace,[43] which was another name for the social interest.

In the second period, (i.e.) from about the seventeenth to

38. *Ibidem.*
39. *Idem* 62.
40. *Idem* 67.
41. *Ibidem.*
42. *Idem* 68, 70.
43. *Idem* 68.

the latter part of the nineteenth century, the idea of the morally omnipotent, sovereign state was dominant. The distinction between the just and the unjust war was necessarily rejected because international law was now regarded as "the voluntary creation of the morally uninhibited wills of the contracting nations."[44] All wars were just because might made right.

In the third period, (i.e.) from the latter part of the nineteenth century to 1946 when the Nuernberg Tribunal rendered its decision, the former classification of just and unjust wars was in effect revived, but under the amoral nomenclature of aggressive and non-aggressive wars. This revival was the result of the disastrous consequences which flowed from the effectuation of erroneous doctrines of international law. These consequences had tended toward the disintegration of world society. This third period witnessed the renunciation of war as an instrument of national policy and the condemnation of recourse to war, for the settlement of international disputes, by most of the nations of the world. Of all the numerous conventions and treaties which implied that aggressive war wsa a crime, the Kellogg-Briand Pact of 1928 was the most important.[45]

The International Military Tribunal for the Far East and the Nuernberg Tribunal should have created a fourth stage in which there would now be universal acceptance of the true concept of international law and the crime of aggressive war. If this had occurred, the present international psychosis would not exist.

In addition to the crime of aggressive war, the leaders of Red China had committed the crime of conspiracy with North Korea and Russia. The leaders of these three nations cooperated to reach the over-all objective of destroying by violence the lawful government of the Republic of Korea. Under the international doctrine of conspiracy, the agreement or plan to wage aggressive war is an additional crime, over and above the act of aggression, after the overt act has been committed.

It is significant that the United Nations condemned Red China as an aggressor in Korea but not its leaders. But Article 5 of the Tokyo Charter conferred jurisdiction on the Tribunal

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44. *Ibidem.*
45. *Idem* 78, 79, 80.

"to try and punish Far Eastern war criminals, who, as individuals, or members of organizations, are charged with offenses,"[46] against the laws and customs of Peace and Humanity, and conventional war crimes. Article 6 of the Charter of the Tribunal, relating to the responsibility of the accused, stated:

> "Neither the official position, at any time, of an accused, nor the fact that an accused acted pursuant to order of his government, or of a superior, shall, of itself, be sufficient to free such accused from responsibility for any crime with which he is charged, but such circumstances may be considered in mitigation of punishment, if the Tribunal determines that justice so requires."

This Article asserted in effect that the defenses of the doctrines of Act of State and Superior Orders were not applicable to the trial.

Many of the celebrated authorities on the subject of international law in the first period "agreed that individuals might be punished for the commission of war crimes. Vitoria, one of the foremost authorities in the early elaboration of a law of nations,"[47] was of this opinion. The individual is the ultimate subject of all law according to the moral view which holds that man may not transfer responsibility for his acts to such artificial creations as the corporate entity of the nation. Hence the doctrine of Act of State may not protect the leader of a nation who has violatde international penal law.

The doctrine of Superior Orders generally means that a person of inferior rank, under a duty of obedience to the superior who gave the order, may claim immunity from prosecution if the order was criminal. But the Tokyo trial upheld the principle that ignorance of international penal law would not afford immunity.[48] The common good of international society imposes the duty of knowledge. But ignorance of fact which relates to the relevance of the law in a particular situation will be a good defense. Thus "common soldiers are entitled to presume the justice of their nation's war because they are almost always not in possession of sufficient facts to make a proper judgment."[49]

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46. *Idem* 123, 129, 130.
47. *Idem* 126.
48. *Idem* 133.
49. *Idem* 135.

V.

Conclusion

Thus far this country, at least after the attack in Korea, has maintained its mental integrity despite pressures by its allies and associates. An internal struggle has been waged in the United States between the respective proponents of the moral and the power concepts of law. As in other great crises in our national history, the former have prevailed. This has been evidenced by the current policy to defend Formosa and to sign a defense treaty for Southeast Asia in Manila last September.

The United States has not severed diplomatic relations with the Soviet Union, nor sought its expulsion from the United Nations as a co-conspirator with Red China. To do so, would be to end a state of fantasy and delusion. But at the same time, it might accelerate the fearful possibility of the madness of a third world war. Hence our task is to continue to humor those nations which have strayed from the path of sanity, striving to help them see the light of truth, but under no illusions that we shall be successful in our generation.

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Regional Meeting Commorating Fiftieth Anniversary of American Society of International Law To Be Held At LSU Law School

A regional meeting commemorating the fiftieth anniversary of the American Society of International Law will be held in Baton Rouge at the Law School of Louisiana State University on Thursday, April 19th. A one-day affair, to which the bar in particular and the public in general are invited, the conference is being conducted under the auspices of the Louisiana State Bar Association and the Louisiana State University Law School and will feature addresses and panel discussions by leading experts in the fields of international law and commerce. The meeting is one of a series of such regional gatherings being staged over the country this spring by the Society with the assistance of the Ford Foundation. Centered on the general theme "The Role of International Law in National Courts and Agencies — Fifty Years of Development," these meetings are designed to stimulate the interest of the legal profession in international law and its importance in practice today.

An outstanding program has been arranged for the Baton Rouge conference. Speaking at a morning session devoted to the topic, "Doing Business in Foreign Countries," will be Woodfin L. Butte of New York. Mr. Butte, a native of Texas, and a member of the bars of Texas, New York, Puerto Rico, the Virgin Islands, and Venezuela, has been associated with Standard Oil Company (New Jersey) since 1940 and has had extensive legal experience in Latin America and the Middle East. He was the first United States citizen to be admitted to the Bar of Venezuela. Following Mr. Butte's address wil be a luncheon session at which a representative of the State Department will talk on "Organization of Foreign Offices."

The afternoon session will develop the subject, "Treaties as Law in National Courts." Discussing the topic from the foreign viewpoint will be Dr. Ernesto Dihigo of Cuba and treating the matter from the domestic angle will be Professor Quincy Wright of the University of Chicago. Dr. Dihigo is one of his country's

leading experts on international law and foreign commercial relations. A practicing attorney, he has been a member of the United Nations International Law Commission, has been prominent in the affairs of the Inter-American Bar Association, and is head of the Inter-American Academy of the Faculty of Law at the University of Havana which specializes in comparative law. Dr. Quincy Wright has had an equally distinguished career. He has been a Professor of International Law at the University of Chicago since 1931 and has written a number of works on international law, the most recent of which is "The Study of International Relations" published in 1955. Dr. Wright has acted as consultant to the State Department, the Foreign Economics Administration, the American member of the International Military Tribunal at Nuremberg, the American High Commissioner for Germany and U.N.E.S.C.O. He has been president of many scholarly organizations including the American Association of University Professors, the American Political Science Association, the International Political Science Association, and is currently serving as president of the American Society of International Law, the sponsoring organization for the regional meeting.

Following each main speaker's address will be a panel discussion by panelists composed of attorneys having problems of foreign practice, teachers of international law and commercial relations, business men engaged in foreign trade, and foreign consular officials. Time is to be allotted to questions from the floor from those in attendance.

There is no registration fee for the conference. There will be tickets sold to the luncheon, however. Limited space is available at Pleasant Hall on the Louisiana State University campus for those desiring to stay overnight. For information, reservations at the luncheon and for local accommodations in Baton Rouge, please contact Associate Professor Leon Lebowitz, Law School, Louisiana State University, Baton Rouge.

Serving as chairman of the Louisiana Bar Association Committee which is working in conjunction with the L.S.U. Law School in sponsoring the regional conference is Clarence L. Yancey of the Shreveport Bar. Serving as committee members are Richard A. Anderson of the Lake Charles Bar, John C. Burden of the Alexandria Bar, Ben R. Miller of the Baton Rouge Bar, Thomas W. Leigh of the Monroe Bar, nad Augusto P. Miceli, Max M. Schaumburger, and Bejamin W. Yancey of the New Or-

leans Bar. Mr. William C. Bradley of the Baton Rouge Bar is to act as reporter for the regional meeting at the national meeting of the Society in Washington. L.S.U. members of the coordinating committee are Dean Paul M. Hebert and Professors Joseph Dainow and Leon Lebowitz.

—o—

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The Solicitor of the Department of Labor is currently receiving and reviewing applications for appointment to legal positions with the Department in Washington, D. C., and in some of the Regional Offices. It would be sincerely appreciated if you would publish a notice to that effect in the next issue of your Bar Journal, or other similar publication.

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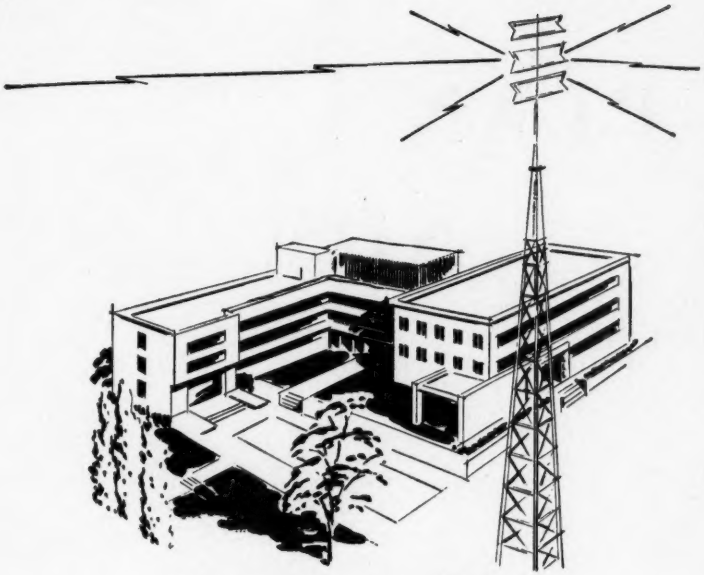

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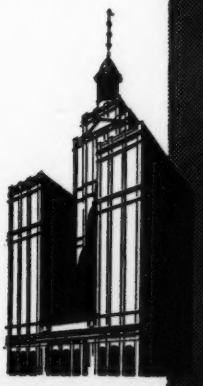

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